香港申訴專員用箋 THE OMBUDSMAN, HONG KONG

YOUR REF :

OUR REF :

DATE : 23 June 2004

The Honourable TUNG Chee Hwa
The Chief Executive of the
Hong Kong Special Administrative Region
Hong Kong

Dear Sir,

Pursuant to section 3(4) of Schedule 1A to The Ombudsman Ordinance, I have the honour of submitting my report on the exercise of the functions of The Ombudsman in the year April 2003 to March 2004. This includes a statement of accounts and the auditor's report on the statement.

Yours faithfully,

(Alice TAI)
The Ombudsman

Encl.

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THE OMBUDSMAN

STATEMENT OF ACCOUNTS
FOR THE YEAR ENDED
31ST MARCH 2004

AUDITORS' REPORT TO THE OMBUDSMAN

(established in Hong Kong pursuant to the Ombudsman Ordinance)

We have audited the accounts on pages 2 to 9 which have been prepared in accordance with accounting principles generally accepted in Hong Kong.

Respective responsibilities of The Ombudsman and the auditors

The Ombudsman Ordinance requires The Ombudsman to prepare accounts which give a true and fair view. In preparing accounts which give a true and fair view it is fundamental that appropriate accounting policies are selected and applied consistently.

It is our responsibility to form an independent opinion, based on our audit, on those accounts and to report our opinion solely to you, as a body, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

Basis of opinion

We conducted our audit in accordance with Statements of Auditing Standards issued by the Hong Kong Society of Accountants. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the accounts. It also includes an assessment of the significant estimates and judgements made by The Ombudsman in the preparation of the accounts, and of whether the accounting policies are appropriate to the circumstances of The Ombudsman, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance as to whether the accounts are free from material misstatement. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the accounts. We believe that our audit provides a reasonable basis for our opinion.

Opinion

In our opinion, the accounts give a true and fair view of the state of affairs of The Ombudsman as at 31st March 2004 and of its surplus and cashflows for the year then ended.

PricewaterhouseCoopers
Certified Public Accountants

Hong Kong, 24th May 2004

THE OMBUDSMAN

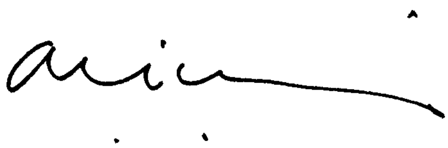
INCOME AND EXPENDITURE ACCOUNT
FOR THE YEAR ENDED 31ST MARCH 2004

	Note	2004 HK$	2003 HK$
Income			
Government subventions		93,230,836	112,534,921
Amortisation of Government subventions	7	3,379,576	3,359,677
Interest income on bank deposits		925,910	1,225,544
Other income		11,889	3,601
		97,548,211	117,123,743
Expenditure			
Operating expenses		63,946,230	86,527,214
Surplus for the year	3	33,601,981	30,596,529
Accumulated surplus brought forward		52,963,626	22,367,097
Accumulated surplus carried forward		86,565,607	52,963,626

THE OMBUDSMAN

BALANCE SHEET
AS AT 31ST MARCH 2004

	Note	2004 HK$	2003 HK$
Non-current assets			
Fixed assets	6	96,458,418	100,291,309
Current assets			
Deposits and prepayments		1,054,590	790,574
Interest receivable		28,752	401,761
Bank balances and cash		93,735,836	74,726,592
		94,819,178	75,918,927
Current liabilities			
Other payables and accruals		2,359,296	17,897,370
Contract gratuity payable		3,900,222	2,070,289
Government subventions - current	7	3,392,470	3,438,190
		9,651,988	23,405,849
Current assets		85,167,190	52,513,078
Net assets		181,625,608	152,804,387
Represented by:			
Accumulated funds		86,565,607	52,963,626
Non-current liabilities			
Contract gratuity payable		1,994,057	2,987,646
Government subventions – non-current	7	93,065,944	96,853,115
		95,060,001	99,840,761
		181,625,608	152,804,387



The Ombudsman

THE OMBUDSMAN

STATEMENT OF CHANGES IN FUNDS
FOR THE YEAR ENDED 31ST MARCH 2004

	2004 HK$	2003 HK$
Total funds as at 1st April	52,963,626	22,367,097
Surplus for the year	33,601,981	30,596,529
Total funds as at 31st March	86,565,607	52,963,626

THE OMBUDSMAN

CASH FLOW STATEMENT
FOR THE YEAR ENDED 31ST MARCH 2004

	Note	2004	2003
		HK$	HK$
Net cash inflow from operating activities	8	17,706,437	36,542,032
Investing activities			
Interest received		1,298,919	875,716
Purchase of fixed assets		-	(26,156,899)
Government subvention received for purchase of fixed assets		3,888	26,314,107
Increase in bank deposits with original maturity over 3 months		(29,570,000)	(52,800,000)
Net cash outflow from investing activities		(28,267,193)	(51,767,076)
Decrease in cash and cash equivalents		(10,560,756)	(15,225,044)
Cash and cash equivalents at 1st April		12,726,592	27,951,636
Cash and cash equivalents at 31st March		2,165,836	12,726,592
Analysis of balances of cash and cash equivalents:			
Bank balances and cash		93,735,836	74,726,592
Less bank deposits with original maturity over 3 months		(91,570,000)	(62,000,000)
		2,165,836	12,726,592

THE OMBUDSMAN

NOTES TO THE ACCOUNTS

1 Status

The Ombudsman was established as a corporation sole by statute on 19th December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

2 Principal accounting policies

The principal accounting policies adopted in the preparation of these accounts are set out below:

(a) Basis of preparation

The accounts have been prepared under the historical cost convention and in accordance with accounting principles generally accepted in Hong Kong and comply with accounting standards issued by the Hong Kong Society of Accountants ("HKSA").

(b) Income recognition

Subventions from Government and other income are accounted for on an accruals basis.

Interest income is recognised on a time proportion basis, taking into account the principal amounts outstanding and the interest rates applicable.

(c) Property and equipment

The Ombudsman, as a non-profit making organisation, is exempt from compliance with the Statement of Standard Accounting Practice 17 "Property, plant and equipment" issued by the HKSA.

Property and equipment costing less than HK$1 million individually are written off in the year of purchase to the income and expenditure account.

Property and equipment costing over HK$1 million individually are stated at cost less accumulated depreciation and accumulated impairment losses and are depreciated at rates sufficient to write off their cost less accumulated impairment losses over their estimated useful lives on a straight-line basis. The principal annual rates are as follows:–

Land and buildings	Shorter of unexpired period of the lease or expected useful life
Leasehold improvements	10%

(d) Government subventions

A government subvention is recognised, when there is reasonable assurance that The Ombudsman will comply with the conditions attaching to it and that the subvention will be received.

Government subventions relating to income are deferred and recognised in the income and expenditure account over the period necessary to match them with the costs they are intended to compensate.

Government subventions relating to the purchase of fixed assets are included in liabilities as deferred income and are credited to the income and expenditure account on a straight-line basis over the expected lives of the related assets.

2 Principal accounting policies (Continued)

(e) Employee benefits

(i) Employee leave entitlements
Employee entitlements to annual leave are recognised when they accrue to employees. A provision is made for the estimated liability for annual leave as a result of services rendered by employees up to the balance sheet date.

Employee entitlements to sick leave and maternity or paternity leave are not recognised until the time of leave.

(ii) Pension obligations
The Ombudsman has established a mandatory provident fund scheme ("MPF Scheme") in Hong Kong. The assets of the MPF Scheme are held in separate trustee-administered funds. Both the Ombudsman and the employees are required to contribute 5% of the employees' relevant income. The Ombudsman's contributions to the MPF Scheme are expensed as incurred.

(f) Operating leases

Leases where substantially all the risks and rewards of ownership of assets remain with the leasing company are accounted for as operating leases. Payments made under operating leases net of any incentives received from the leasing company are charged to the income and expenditure account on a straight-line basis over the lease period.

3 Surplus for the year

Surplus for the year is stated after charging the following:

	2004 HK$	2003 HK$
Auditors' remuneration	25,000	15,000
Depreciation	3,375,688	2,844,497
Operating lease rentals - land and buildings	115,400	3,909,308
Property and equipment (costing less than HK$1 million individually) written off	373,820	9,374,164
Staff costs (Note 4)	51,615,540	62,934,318

4 Staff costs

	2004 HK$	2003 HK$
Salaries and allowances	45,451,427	57,842,501
Contract gratuity	4,340,704	4,071,317
Pension costs - MPF Scheme	758,322	638,375
Unused annual leave	636,318	-
Other staff benefits	428,769	382,125
	51,615,540	62,934,318

5 Taxation

The Ombudsman is exempt from taxation of the Inland Revenue Ordinance in accordance with the Schedule 1A section 5(1) of The Ombudsman Ordinance.

6 Fixed assets

	Leasehold improvements HK$	Land and buildings HK$	Office furniture HK$	Office equipment HK$	Motor vehicle HK$	Computer equipment HK$	Total HK$
Cost							
At 1st April 2003	11,456,898	91,700,000	1	1	1	1	103,156,902
Price adjustment (Note)	(457,203)	-	-	-	-	-	(457,203)
At 31st March 2004	10,999,695	91,700,000	1	1	1	1	102,699,699
Accumulated depreciation							
At 1st April 2003	640,600	2,224,993	-	-	-	-	2,865,593
Charge for the year	1,083,188	2,292,500	-	-	-	-	3,375,688
At 31st March 2004	1,723,788	4,517,493	-	-	-	-	6,241,281
Net book value							
At 31st March 2004	9,275,907	87,182,507	1	1	1	1	96,458,418
At 31st March 2003	10,816,298	89,475,007	1	1	1	1	100,291,309

Note

The costs incurred for leasehold improvements are still under negotiation between the supplier and Government. Accordingly, the Ombudsman, by reference to the costs estimated by the Architectural Services Department of Government, has made a price adjustment to reflect revised costs.

7 Government subventions

The amounts represent the funds granted by Government for the purchase of land and buildings and leasehold improvements and are recognised as income on a straight line basis over the useful life of the assets, which are estimated to be 40 years and 10 years, respectively.

	2004 HK$	2003 HK$
Government subventions	96,458,414	100,291,305
Current portion of government subventions	(3,392,470)	(3,438,190)
	93,065,944	96,853,115

8 Reconciliation of surplus for the year to net cash inflow from operating activities

	2004 HK$	2003 HK$
Surplus for the year	33,601,981	30,596,529
Interest income	(925,910)	(1,225,544)
Depreciation	3,375,688	2,844,497
Amortisation of Government subventions	(3,379,576)	(3,359,677)
Operating surplus before working capital changes	32,672,183	28,855,805
Increase in deposits and prepayments	(264,016)	(262,972)
(Decrease) / increase in other payables and accruals	(15,538,074)	6,905,014
Increase in contract gratuity payable	836,344	1,044,185
Net cash inflow from operating activities	17,706,437	36,542,032

9 Commitments for project costs

	2004 HK$	2003 HK$
Contracted but not provided for	–	187,250

10 Approval of accounts

The accounts were approved by The Ombudsman on 24th May 2004.

History in Brief

Date	Event
1988	
20 July	The Commissioner for Administrative Complaints (COMAC) Bill was passed by the Legislative Council (LegCo)
1989	
1 February	The COMAC Ordinance was enacted First Commissioner Mr. Arthur Garcia, JP assumed office
1 March	The Office of COMAC became operational
15 November	COMAC became a member of the International Ombudsman Institute
1994	
1 February	Second Commissioner Mr. Andrew So, JP assumed office
24 June	The COMAC Ordinance was amended : • to enable the public to lodge complaints directly, instead of by referral from LegCo Members • to extend the jurisdiction to some major statutory bodies • to empower the Commissioner to publish anonymised investigation reports • to empower the Commissioner to initiate direct investigation
30 June	Advisers were appointed to provide expert advice and professional opinion
1 July	Chinese title of the Commissioner was changed to「申訴專員」and the Office to「申訴專員公署」
1 October	First batch of contract investigation officers was recruited
1995	
1 March	Jurisdiction was extended to investigation into alleged breach of Code on Access to Information
24-26 October	The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium
1996	
25 January	Use of Internal Complaint Handling (INCH) mode was introduced to resolve complaints
1 March	Non-official Justices of the Peace (JPs) were enlisted in a JPs Assistance Scheme

History in Brief

Date	Event
16 April	The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association and became a founding member
20-29 April	Exchange programme with the China Supervision Institute was arranged
12-13 June	First Complaint Management Workshop for public officers was organised
5 September	Resource Centre was opened
24 October	The Ombudsman was elected to the Board of Directors of the International Ombudsman Institute (until 31 January 1999)
27 December	• English titles were changed to "The Ombudsman" and "Office of The Ombudsman" • Jurisdiction was extended to investigation into complaints of non-compliance with the Code on Access to Information against Government departments not included earlier
1997	
1 April	Mediation service was launched as an alternative dispute resolution method
25 July	The Ombudsman Awards were introduced to recognise public organisations handling complaints positively
1998	
8 May	The Ombudsman was elected Secretary to the Asian Ombudsman Association
1 July	The Ombudsman Certificate of Appreciation was introduced to acknowledge complainants making special contribution towards a higher standard of public administration
1999	
1 April	Third Ombudsman Ms. Alice Tai, JP assumed office
22 July	The Ombudsman Awards were extended to recognise public officers' contribution towards better quality services
2000	
5 January	Complaints by e-mail were accepted
27 July	The Ombudsman Awards were further extended to public officers handling complaints professionally
2 November	The Ombudsman was elected to the Board of Directors of the International Ombudsman Institute

History in Brief

Date	Event
2001	
28 March	Telephone complaint service was introduced
1 April	Administrative systems independent of Government were instituted in preparation for delinking
19 December	The Ombudsman (Amendment) Ordinance 2001 came into operation : • to establish The Ombudsman as a corporation sole with full powers to conduct its own financial and administrative matters • to empower The Ombudsman to set terms and conditions of appointment for staff • to sever linkage with Government systems and processes • to give statutory status to mediation as an alternative dispute resolution method for processing complaints
2002	
28 March	Permanent office accommodation was acquired
6 September	Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan
16 October	The Ombudsman was elected Secretary to the International Ombudsman Institute
2003	
12 November	Mediation training was extended to officers of scheduled organisations
2004	
7 January	As an Ombudsman in Asia Pacific Region and the first ever Ombudsman invited to speak in an international conference on “Good Governance” in Ulaanbaatar, Mongolia
9 March	Government announced reappointment of Ms. Alice Tai, JP as The Ombudsman for another five years (2004 – 2009)

June 2004



2003 / 04 marked the end of my first five-year term as The Ombudsman.

Looking back over the years, I see by far the most significant landmark as the delinking of my Office from Government systems and practices. This was by enactment of The Ombudsman (Amendment) Ordinance 2001 on 19 December 2001. Almost the entire staff complement is now appointed by me on contract. Another achievement was acquisition of permanent office accommodation in 2002. Meanwhile, with the flexibility and independence resulting from delinking, I have accumulated sufficient savings to retain experienced staff and cater for continuity of the Office, even in the face of financial stringencies.

Externally, I have maintained regular contacts with other ombudsmen or offices with similar functions in the Asia-Pacific Region and worldwide. In September 2000, I was elected to the Board of Directors of the International Ombudsman Institute as a Director of the Australasian and Pacific Region. Now, I am the Secretary to the Boards of both the International Ombudsman Institute and the Asian Ombudsman Association. Such contacts offer useful professional exchanges with overseas ombudsman institutions and benefit the development of ombudsmanship in Hong Kong.

On complaint handling, we introduced a service for receiving complaints by e-mail in January 2000 and by telephone in March 2001. The Ombudsman (Amendment) Ordinance 2001 has put our preliminary inquiries and mediation service on a sound legal basis.

From 1999 / 2000 to 2003 / 2004, my Office concluded close to 20,000 complaints and made 1,018 recommendations for those fully investigated and 459 suggestions for those into which we conducted preliminary inquiries. Most of these recommendations and suggestions have been implemented by the organisations concerned. Public administration has thus improved: clearer guidelines, closer coordination, more effective enquiry and complaint handling, enhanced staff training, greater transparency and clearer accountability to the public. Further examples are outlined in Chapter 6 of this report.

In my 2002 Annual Report, I noted the compartmental mentality and minimalistic approach of some Government departments. This year, I have seen several departments paying only lip service in discharging their duties, especially in enforcement action. A

manifestation of this is the repeated serving of notices, or even warnings, on the culprit indefinitely without any enforcement action whatsoever so that the notices and warnings were all empty threats, and perceived as such by the public. Another form of failure to take real action is hiding behind prioritisation. One or two departments seem satisfied to classify a matter as "low priority" and then accord no priority to it for years on end. Such attitude, such approach, will not only encourage non-compliance and fuel public grievance but, worse still, feed public contempt for the departments concerned and even for Government as a whole.

Most of the organisations on my Schedule take our referrals to them seriously and react positively. In response to our inquiries, they provide my Office with full facts, opening up their files and archives where necessary. For their support, I am most grateful. Meanwhile, I also expect from complainants all available information. They have to establish a *prima facie* case of how and why they are aggrieved. I will not accept mere allegations. In sum, I need cooperation from both complainants and the organisations concerned.

For the effective discharge of my functions, my staff and I observe strictly the requirement for confidentiality imposed by The Ombudsman Ordinance. Given this constraint, I still endeavour to be transparent and keep the public informed of my work. I hold regular press conferences; I meet the media; I scan news reports for issues of public concern. My colleagues and I are encouraged that generally our work has received good media coverage and positive public feedback. We look to the media and to our community for feedback and for comments on our work. We will not be complacent. We will keep our work under constant review.

With 15 years behind us since our institution in 1989, it is time to review the functions and purview of The Ombudsman. This will be a special task in my next term of office.

Administration

Staffing

1.1 This is the third year since our delinking from Government systems and procedures. The last reporting year ended with our Office being staffed by 76 or 83% contract officers appointed under The Ombudsman Ordinance. We have since maintained our momentum in recruitment. By 31 March 2004, only five or 5.7% of my entire workforce of 88 were civil servants. They will all return to Government within 2004.

Fig. 1.1

Contract Staff in the Office (as at 31 March)

	2000	2001	2002	2003	2004
Contract Staff	11 (13.2%)	16 (17.8%)	58 (59.2%)	76 (83.0%)	83 (94.3%)
Civil Servants	80 (86.8%)	74 (82.2%)	40 (40.8%)	16 (17.0%)	5 (5.7%)
Total	91	90	98	92	88

1.2 Meanwhile, we provide for continuity in the Office by maintaining a team of about 40 contract investigation officers with experience and expertise. We also offer opportunities to staff for career development. For example, in February 2004, two Complaints Assistants, hitherto deployed only on enquiries and telephone complaints, were transferred to investigation teams to assist in processing complaints. The aim is to provide training to the Complaints Assistants so that they could be able to take up investigation duties in future. It also helps broaden their outlook and enhance their exposure to prepare them for a career in the Office. Such arrangements would allow this Office to groom officiers with potential.

1.3 To cater for seasonal fluctuation of caseload and for specific projects, we continued to employ temporary and part-time staff to supplement the regular task force. For example, we have engaged one such officer to review our procedures, practices and operational guidelines. Others have helped to process individual cases or direct investigations.

Staff Training

1.4 Since early 2003, we have recruited ten more contract investigation staff, bringing the strength of such staff to 36 in the reporting year. New recruits undergo induction and on-the-job training to help them settle in and to make for quality assurance in investigative functions. Staff training is particularly important to maintain an adequate level of expertise and experience at a time when the only assurance from the Administration is steady reduction of resources in the years ahead.

1.5 For induction, we attach new entrants to different units to familiarise them with the different aspects of our services: e.g. screening of complaints and deciding on modes of processing. For on-the-job training, senior officers guide and advise them in their day-to-day performance. In time, we will rotate them to different jobs to sharpen their skills and develop their potential.

1.6 Weekly team meetings are instructive in sharing experience and exchanging ideas. Where specific issues warrant special sessions, we organise open forum for airing of problems or queries and for dissemination of ideas and information. The Ombudsman attends these occasions from time to time

to have direct dialogue with staff, to impart her philosophy and to clarify her stance on various issues.

1.7 To enhance professionalism and to acquire new skills, we invite experts to address our staff or to design and tailor-make courses. This year, we commissioned the Hong Kong Mediation Council for techniques in mediation and the Whole Person Development Institute for skills in communication with complainants requiring special attention.

1.8 To optimise training opportunities and to facilitate mutual understanding, we made places available on the mediation course to a number of departments particularly prone to public complaints. These were Food and Environmental Hygiene Department, Post Office, Home Affairs Department, Housing Department and Transport Department. Our aim is to encourage departments to make greater use of mediation in resolving disputes and handling complaints. Feedback on this from the departments was generally favourable.

Maximising Resources

1.9 Since delinking, we operate on a lump-sum grant for meeting staffing and day-to-day expenses. In keeping with the Administration's determination to cut public expenditure, our provision for 2004/05 will be reduced by 6.8%.

1.10 To ensure the financial viability of the Office, we have implemented firm measures to economise and to contain expenditure. These include continuing review of the organisation and staffing structure, introduction of multi-tasking and combined grades, award of increments only on merit and employment of temporary or part-time staff for seasonal or sudden rise in caseload. Every effort is made to ensure efficient staffing for quality output.

1.11 As staffing expenses account for over 80% of our overall expenditure, we had initiated a review of our existing pay structure for maximum cost-effectiveness in the years ahead. Key elements for examination were the levels of cash allowance and the award of increments on renewal of contract. The ultimate aim is to ensure adequate resources for the future, maintain continuity of service, stability of staffing and reasonable career opportunities for staff, even in the face of financial stringencies.

Complaints against the Office

1.12 This year, we received and concluded 11 complaints against staff or against our procedures, three more than last year. To some extent, this may be a measure of growing awareness of our services and rising expectations of our community. Whether or not such complaints suggest defects or deficiencies in the performance of our Office, we take them most seriously. We value each and every one as an opportunity to review our judgment and procedures, and where necessary, revise practices to improve our operations.

1.13 At times, complaints against our staff stem from dissatisfaction with the outcome or simply disappointment over The Ombudsman's decision of a case. This is inevitable: we investigate to establish facts about fair administration but at times, complainants seek recompense, or even retribution, and these are beyond our purview.

Fig. 1.2

Complaints against the Office Concluded in 2003/04

Nature	Substantiated	Partially substantiated	Unsubstantiated	Incapable of determination
Staff manners (including delay and negligence)	1	2	7	–
Procedures	–	1	–	–
Total	11			

Protection against SARS

1.14 The SARS outbreak in early 2003 called for everyone in the community to make conscientious and concerted efforts to contain the spread of the virus. To protect our staff and visitors to our Office, we introduced a number of preventive measures during this critical period including: –

- wearing protective facemasks ourselves; and
- providing visitors with facemasks and disposable wet towels with disinfectant.

1.15 For regular and longer-term precaution, an infra red camera has been installed at our reception area since early 2004 for detecting visitors with higher than normal body temperature. These visitors will be received with special care.

Staff Suggestion Scheme

1.16 To encourage staff to make suggestions for enhancing operational efficiency and effectiveness, we have introduced a staff suggestion scheme this year to award those colleagues who offer practical ideas for improving or streamlining our systems and procedures. The scheme aims at –

- making better use of energy or time, resources and materials;
- improving utilisation of equipment;
- simplifying office practices and procedures;
- attaining greater professionalism and higher efficiency by strengthening staff relations and raising staff morale; and
- ensuring occupational health and safety, office security, quality of service or output.

1.17 Suggestions will be considered by a panel comprising the Deputy Ombudsman, Assistant Ombudsmen and the Chief Executive Officer.

1.18 Meritorious suggestions are presented awards in cash or certificates of commendation, or both, depending on their efficacy upon adoption by The Ombudsman.

Chapter 2

Authority and Restrictions

2.1 Appointed by the Chief Executive of the Hong Kong Special Administrative Region Government, The Ombudsman has statutory authority to operate with independence and without fear or favour. The enabling legislation is The Ombudsman Ordinance (the Ordinance), Cap 397, Laws of Hong Kong.

Powers and Functions

2.2 The function of The Ombudsman is to investigate into maladministration, by the public organisations in Schedule 1 to the Ordinance, through processing complaints or by initiating direct investigation.

Fig. 2.1

Definition of Maladministration – section 2 of the Ordinance

"Maladministration" means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes –

(a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;

(b) abuse of any power (including any discretionary power) or authority including any action which –

- (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory;
- (ii) was based wholly or partly on a mistake of law or fact;

(c) unreasonable, unjust, oppressive or improperly discriminatory procedures

Powers of Investigation

2.3 Where a complaint is lodged with The Ombudsman's Office, The Ombudsman may, under section 7 of the Ordinance, conduct an investigation, except where it is outside her jurisdiction or otherwise restricted under the Ordinance (see **paras. 2.13 - 2.15**). This may be by preliminary inquiries or a full investigation. The law requires The Ombudsman to notify the organisation concerned before starting a full investigation.

2.4 Under section 11A of the Ordinance, The Ombudsman may conduct preliminary inquiries into a complaint before deciding whether a full investigation should be conducted. Section 11B empowers The Ombudsman to deal with complaints by mediation with consenting parties. Where preliminary inquiries or mediation point to the need for a full investigation, the parties to the complaint will be so informed. Details of our preliminary inquiry and mediation service are described in **Chapter 4**.

2.5 The Ombudsman determines whether a complaint is subject to her jurisdiction. Where The Ombudsman considers it in the public interest to do so, she may continue with an investigation even if the complainant has withdrawn his or her complaint.

2.6 The Ordinance also empowers The Ombudsman to investigate matters of maladministration even in the absence of a complaint. More details of this aspect of my work are given in **Chapter 3**.

Authority and Restrictions

2.7 As with ombudsman institutions the world over, The Ombudsman has extensive investigative powers. Section 13 of the Ordinance empowers The Ombudsman to summon any person for examination or require such person to furnish information and produce any document or item in his or her possession or under his or her control.

2.8 Section 20 of the Ordinance confers upon The Ombudsman the power to enter any premises of a scheduled organisation, inspect the premises and carry out on the premises any investigation which is within her jurisdiction.

2.9 Under section 23 of the Ordinance, it is an offence to obstruct, without lawful excuse, The Ombudsman or her officers in the exercise of powers conferred by the Ordinance, fail to comply with their lawful requirements, make false statements or otherwise knowingly mislead them. Such offences are liable to a fine of $10,000 and to imprisonment for six months.

Fig. 2.2

Powers of Investigation

- Summoning of witnesses
- Access to documents including classified documents
- Entry into premises
- Penalty for not cooperating in investigation

Investigation Reports

2.10 The Ombudsman must, under section 17 of the Ordinance, inform the complainant of the result of her investigation.

2.11 The Ombudsman is empowered under section 16 of the Ordinance to report the findings, opinions and recommendations on completion of a full investigation. In the case of such a report, the organisation concerned will be given the opportunity to comment for inclusion, where appropriate, in the final report. The report will be given to the head of the organisation for implementation. Where the head of the organisation disagrees with the findings or refuses to accept the recommendations, The Ombudsman may consider submitting the report to the Chief Executive.

2.12 The Ombudsman's Office is not a Court of Law and, unlike Court verdicts, The Ombudsman's recommendations are not binding. Yet, where an organisation fails to implement or to act adequately on any recommendation, The Ombudsman may report to the Chief Executive. Section 16(6) of the Ordinance requires that, within one month of such a report being submitted, or such longer period as the Chief Executive may determine, a copy of the report shall be laid before the Legislative Council.

Restrictions on Jurisdiction

2.13 The Ombudsman's purview is not all pervasive. Section 8, read with Schedule 2 to the Ordinance, specifies actions not subject to The Ombudsman's investigation, i.e. actions outside her jurisdiction.

申訴專員 The Ombudsman

Fig. 2.3

Examples of Actions not Subject to Investigation – Schedule 2 to the Ordinance

- Actions in relation to security, defence or international relations
- Legal proceedings or prosecution decisions
- Exercise of power to pardon criminals
- Contractual or commercial transactions
- Personnel matters
- Grant of honours, awards or privileges by Government
- Actions by the Chief Executive personally
- Imposition or variation of conditions of land grant
- Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
- Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

2.14 Government policies and professional judgments are outside The Ombudsman's jurisdiction as they are not administrative actions *per se*, even though they may be the basis from which complaints of maladministration emanate. These are often subjects of complaints received. The Ombudsman would scrutinise these scrupulously to see if there are administrative aspects which come within her jurisdiction.

2.15 Section 10(1) of the Ordinance prescribes restrictions where The Ombudsman shall not conduct an investigation.

Fig. 2.4

Major Restrictions on Investigation of Complaint – section 10 (1) of the Ordinance

- Complainant having knowledge of subject of complaint for more than two years
- Complaint made anonymously
- Complainant not identified or traced
- Complaint not made by person aggrieved or suitable representative
- Subject of complaint and complainant having no connection with Hong Kong
- Statutory right of appeal or remedy by way of legal proceedings (except judicial review) available to complainant

2.16 Under section 10(2) of the Ordinance, The Ombudsman may decide not to investigate a complaint under certain circumstances.

Fig. 2.5

Circumstances where The Ombudsman may Decide not to Investigate – section 10 (2) of the Ordinance

- Investigation of similar complaints before revealed no maladministration
- Subject matter of complaint is trivial
- Complaint is frivolous or vexatious or is not made in good faith
- Investigation is, for any other reason, unnecessary

2.17 Where The Ombudsman decides not to conduct or to discontinue an investigation, she must inform the complainant of her decision with the reasons. My Office critically examines all in-coming complaints to establish whether they come within my statutory purview. If not, we promptly explain why we cannot or do not pursue the complaint. Where possible, we still try to help by pointing out the appropriate avenues for redress.

2.18 It is at times not easy to demarcate the boundaries prescribed in Schedule 2 to the Ordinance. I take a liberal approach and "screen in" all points administrative in nature for scrutiny and inquiry where due. My aim is to take every opportunity to identify areas for improvement in public administration.

2.19 Some of the restrictions prescribed by section 10(1) of the Ordinance are discretionary. I exercise discretion with caution and in accordance with the provisions of the law in deciding whether or not to conduct, or to discontinue, an investigation.

Secrecy Requirement

2.20 The law requires that all members of my Office and I, as well as my advisers, abide by a secrecy code. We must keep the strictest confidentiality on all matters that come to our knowledge in the exercise and execution of our functions. Breach of this code is a criminal offence, which carries a maximum penalty of a fine of $50,000 and imprisonment for two years.

2.21 From time to time, Legislative Councillors and civic leaders, members of the public and the media refer complaints to me with the expectation that they would be informed of the progress of processing. We sincerely appreciate their support and warmly welcome their referral. However, we are duty-bound by law not to discuss with, or to disclose to, third parties the processing or the outcome of any case. Except for official publication of an investigation report in anonymised form, we cannot and will not respond to any enquiry on individual complaints other than from the parties concerned. Here, I take the opportunity to thank all who have referred cases to my Office for their understanding of and respect for our secrecy code.

2.22 Before initiating inquiries, we always seek the complainants' consent to obtain their personal data from the organisations concerned and to reproduce their documents to relevant organisations for processing their cases. This safeguards the privacy of their personal data. Where a complainant does not give consent, we will not be able to pursue a case.

2.23 The secrecy code is the cornerstone of the ombudsman system. It is strictly observed by all of us in discharging our duties. The aim is to ensure any person or organisation providing information to our Office can do so without reserve and without fear of possible consequences from the disclosure of their identity or related data.

2.24 During the year, a request by a complainant to access documents we collected in our investigation triggered off a discussion between this Office and the Office of the Privacy Commissioner for Personal Data on how our secrecy code and the principles of personal data protection can be complied with

simultaneously. This challenge is discussed in detail in **Chapter 5**.

The Ombudsman's Discretion

2.25 The Ordinance gives The Ombudsman discretion to undertake or not, continue or discontinue an investigation. Exercise of this discretion enables me to maximise the use of resources and hence our services to the community.

2.26 In view of my statutory independence, my decision on a case is final. Anyone not satisfied with my decision may request my Office to review a case or apply to the Court for judicial review.

Chapter 3

Direct Investigation

3.1 Since 1994, The Ombudsman has been empowered, under paragraph (ii) of section 7(1) of the Ordinance, to initiate direct investigation. This gives The Ombudsman a free hand to probe into matters that call for review of administrative systems and procedures or practices, and recommend improvement measures, notwithstanding the absence of complaints. I attach great importance to this function because it enables me to conduct independent review of matters of moment at a macro level and systems with systemic or widespread defect.

3.2 A recent survey conducted by the Census and Statistics Department for our Office showed that not many in the public were aware of this function of my Office (see the section on ***Thematic Household Survey*** in **Chapter 7**). We will publicise this aspect more extensively in future.

Aims and Objects

3.3 Our direct investigations aim to :

(a) follow through systemic problems which investigation of individual complaints cannot solve;

(b) forestall complaints or eliminate problems; and

(c) address fundamental problems believed or suspected to be the underlying cause for complaints.

3.4 With direct investigations, we endeavour to improve the quality of public administration and to promote accountability. This should help Government to appreciate the needs and expectations of a discerning and ever more demanding community.

Selection of Issues

3.5 Selection and monitoring of areas for direct investigation is a rigorous process undertaken by a standing panel chaired by my Deputy. The two Assistant Ombudsmen and our small team for direct investigation take part in these deliberations.

3.6 A direct investigation may be prompted by new or revised Government policies, topical issues or repeated complaints to me on particular matters. Matters for direct investigation are generally :

- of community interest, aspirations or expectations;
- not for the courts or tribunals;
- of macro magnitude or typical concern; and
- not under examination or study by another agency.

Investigation Methodology

3.7 Our Office has a small team dedicated to conducting direct investigations. While the statutory powers are the same for direct investigations and for cases, the former assignments are more comprehensive and invariably cover wider issues. Besides notifying the organisation concerned, we will publicly declare the initiation of a direct investigation and invite views from relevant sectors as well as community at large. This is different from investigation of individual complaints, which is subject to the secrecy code. We will also approach parties that we believe may have comments or information on the subject.

3.8 Before we formally launch a direct investigation, we may conduct an assessment on the subject. For this purpose, we collect relevant information publicly available, such as annual reports and homepages, legislation and media reports. We may also seek direct information from the organisation itself. If such preliminary study points to the need for further scrutiny, The Ombudsman will formally notify the head of the organisation before making a public declaration. If the preliminary study shows no significant maladministration, we will inform the organisation and where appropriate prepare a Direct Investigation Assessment Report with observations and suggestions. These reports are placed in our Resource Centre for public reference.

Investigations over the Years

3.9 Since conferment of powers for direct investigation in 1994, this Office has completed 46 direct investigations resulting in 628 recommendations. These investigations are listed at **Annex 6**. We request the organisations concerned to report progress on the implementation of our recommendations in six months and will continue to monitor until the recommendations are implemented.

3.10 Over the recent five years, a total of 23 direct investigations were undertaken :

Fig. 3.1

Direct Investigations in the Recent Five Years

1999/2000	3
2000/01	5
2001/02	4
2002/03	6
2003/04	5

3.11 This year, apart from five direct investigations, my Office completed five direct investigation assessments (see **Fig 3.4**).

Fig. 3.2

Direct Investigation Reports Published

22 May 2003	Enforcement of the Education Ordinance on universal basic education
2 July 2003	Operation of the Integrated Call Centre
14 November 2003	Assistance provided by Home Affairs Department to owners and owners' corporations in managing and maintaining their buildings
18 December 2003	Prevention of abuse of the Comprehensive Social Security Assistance Scheme
4 March 2004	Handling of examination scripts under marking

Fig. 3.3

Direct Investigations in Progress

Declared	Subject
14 November 2003	Enforcement action on unauthorised building works in New Territories exempted houses
14 November 2003	EMB's arrangements for surplus teachers in aided primary schools 2003/04
18 December 2003	Enforcement of the Building Management Ordinance

Fig. 3.4

Direct Investigation Assessments Completed

Completed	Subject
13 June 2003	Arrangements for claims relating to traffic accidents involving Government vehicles
4 September 2003	Monitoring of compliance with licensing conditions for operation of non-franchised buses (residents' service)
19 September 2003	System of monitoring the operation of road maintenance vehicles
24 October 2003	Administrative arrangements for temporary closure of public swimming pools
18 December 2003	Mechanism for handling complaints on TV advertisements

3.12 In general, the organisations concerned are quite cooperative during the investigation process. After all, our aim is to help them improve their systems, procedures and practices for better administration.

Chapter 4

Complaint Handling

Lodging of Complaints

4.1 Most complaints come in by post. Some complainants come to our Office and are received by counter staff. Our investigation officers serve in rotation as duty officers to interview complainants in person. Where complainants have difficulty in putting their case in writing, our duty officers will take down the details for their verification later by post. We also accept complaints via e-mail, though subsequent correspondence in further processing will be by post to ensure security of the information. For simple initial cases, we have arrangements for complaints by telephone[1]. Generally, such cases should be capable of being explained in less than 15 minutes, involve two organisations or less and not a great deal of documentary evidence.

Fig. 4.1

Complaints Received in 2001/02 - 2003/04

Mode	2001/02	2002/03	2003/04
In person	260	425	324
In writing -			
by letter	1,116	682	1,634
by complaint form	828	1,270	722
by fax	664	978	972
by e-mail #	360	613	742
By telephone*	508	414	267
TOTAL	**3,736**	**4,382**	**4,661**

introduced in January 2000
* introduced in March 2001

Regardless of the mode, complainants must identify themselves and we are required to be satisfied that they are the aggrieved parties.

Assessment

4.2 My counter staff, duty officers and Assessment Team form the front-line of my Office. Members of the team scrutinise all in-coming complaints and enquiries. Where it is evident from the outset that a matter falls outside my purview (**Fig. 2.3**), is subject to restrictions (**Fig. 2.4**) or is not to be investigated by discretion exercised by The Ombudsman (**Fig. 2.5**), we aim to notify complainants within 15 working days. Where possible, we try to help and advise where and how they may seek assistance or redress. (See **Fig. 5.2** for our performance pledges.)

4.3 Complaints within my purview are "screened in" for examination by one of four investigation teams. Each team is headed by a Chief Investigation Officer working to one of two Assistant Ombudsmen.

Preliminary Inquiries

4.4 To determine whether a full investigation is necessary, we conduct preliminary inquiries for facts and information under section 11A of the Ordinance. Preliminary inquiries may take the form of Internal Complaint Handling Programme (INCH) or Rendering Assistance / Clarification (RAC). Often, they result in the matters under complaint being resolved or clarified.

1 The conversation is recorded on tape and then written up for verification with complainant by post.

Fig. 4.2

Preliminary Inquiries

Type	Process	Cases concluded
INCH	With the consent of complainants, simple cases are referred to the organisations concerned for investigation and reply direct to the complainant. The Ombudsman may request the organisations to provide specific information in its reply, monitors the process and scrutinises the reply, intervening when the reply is not satisfactory. This may lead to RAC or full investigation.	203
RAC	The Office collects the facts relating to the case. If the facts fully explain the matter under complaint, the findings with observations will be presented to the complainant, with suggestions to the organisations concerned on remedial action and improvement, where appropriate. If further action is called for, a full investigation will be conducted.	1,631

4.5 Preliminary inquiries are an important means for processing complaints of varying complexity. They generally take less time for completion. However, as with full investigations, my Office will follow up with the organisations concerned their implementation of our suggestions to them. As shown in **Fig. 4.2**, a total of 1,834 complaints were resolved by preliminary inquiries in 2003/04.

Mediation

4.6 Where a complaint involves only minor or no maladministration, The Ombudsman may deal with the complaint by "alternative dispute resolution": namely, mediation. This must have the consent of both the complainant and the organisation concerned. It is a voluntary process provided by section 11B of the Ordinance. The complainant and representative of the organisation agree to meet and explore a mutually acceptable solution to the subject under complaint. Investigators of our Office who have been trained as mediators act as impartial facilitators of the dialogue.

4.7 If mediation does not resolve matters, the Office may then initiate preliminary inquiries where warranted. In that event, another investigator will be assigned to handle the case afresh, to ensure impartiality as well as confidentiality of the information from the parties provided during mediation.

Full Investigation

4.8 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or significant

deficiencies, I will direct a full investigation. The process necessitates extensive probing for comprehensive evidence collection. We search original documents and study subject files. We also seek statements from persons involved and may interview them in person where necessary. At times, we consult members of our Panel of Professional Advisers. They are experts of repute with considerable standing in the legal, medical and engineering fields (**Annex 14**) whom I have appointed under section 6A of the Ordinance to advise and assist me.

4.9 The organisation under complaint is given every opportunity to comment and to make representations on my draft investigation report. Individuals subject to our criticism are specifically given the opportunity to explain and be heard. In recommending administrative remedies, we aim to make for more open and client-oriented, transparent and accountable public administration. Heads of organisations have a duty to report to me at regular intervals the progress of their implementation of my recommendations.

Investigation and Internal Monitoring

4.10 I am assisted by my Deputy, two Assistant Ombudsmen and four teams in investigating complaints and monitoring our recommendations. I have delegated to each level specific authority for acting on my behalf. As a general rule, the work of investigation officers is carefully vetted and monitored by team leaders. Reports and replies are scrutinised by the directorate and then finalised by me in conclusion.

4.11 We have a computerised complaint management system, which readily provides information on individual cases and facilitates compilation of statistics. With its assistance, my directorate and I can closely monitor the progress of our investigations .

4.12 In this context, my investigation teams work under close scrutiny. My Deputy and the Assistant Ombudsmen hold meetings regularly with individual teams, to keep tabs on cases under processing. These sessions provide a forum for frank exchange of views and analysis of facts, debate on contentious points and directions for further action. Above all, they ensure consistency in case work and offer opportunities for sharing experience.

4.13 To keep myself well posted on our operations, I attend meetings of each team at least once a month. In this way, I directly guide investigations, clear uncertainties and discuss strategies on complex cases.

4.14 From time to time, I convene open forums to update staff on concepts, principles and philosophy on matters within my purview. These help to promote mutual understanding and enhance *esprit de corps*. Through these discussions, we refine operational processes, standardise practices and generate new ideas.

Outcomes of Investigation

4.15 On conclusion of each full investigation, a complaint is classified by the extent to which maladministration has been found: “substantiated”, “partially substantiated” or “not substantiated”. During the year under report, I found cases

where although the specific allegations in the complaint were not substantiated, other significant acts of maladministration were identified in the course of our investigation. I feel duty-bound to expose those defects. For this, I have introduced the classification of "substantiated other than alleged" to highlight the gravity of the maladministration unearthed. These classifications are defined in **Annex 2**.

Code on Access to Information

4.16 In March 1995, Government introduced on a pilot basis an administrative Code on Access to Information for open and accountable government. The Code has been extended progressively to all Government bureaux and departments since December 1996.

4.17 Where a bureau or department fails to comply with the Code, an applicant may lodge a complaint with me to seek a review of the initial decision by the organisation in receipt of the request for information. In the five years since 1999/2000, we have dealt with 25 such complaints.

Fig. 4.3

Complaints Relating to Code on Access to Information handled since 1999/2000

1999/2000	8
2000/01	4
2001/02	1
2002/03	3
2003/04	9

Patterned Issues

4.18 Whilst we examine each case independently, sometimes a "pattern" of similar complaints emerges and calls for a more global view.

Seepage : Perennial Cause for Complaint

4.19 Seepage continues to be a common complaint. Such cases involve three departments – Food and Environmental Hygiene, Buildings and Water Supplies – each having a specific role in law for different aspects of seepage. Where seepage occurs in public housing, Housing Authority and Housing Department are involved. Given its persistence and prevalence as a major cause for complaint, my Office considers there may be scope for a comprehensive study by direct investigation.

Contracting-out of Services

4.20 Since the 1990s, contracting-out has become an increasingly popular mode of service delivery by many Government departments to achieve value for public money and the concept of "small government". In the face of financial stringencies, this will continue to be the trend. While this has reaped positive financial returns, our Office has seen a rising number of public complaints about services provided by contractors and inadequate supervision over contractors by Government departments. We have found unsatisfactory services, due to contractors' lack of experience in public services, absence of proper guidelines for contractors or patchy performance in monitoring by departments. "Buck-passing" between departments and contractors has also been observed in

some cases. (See, for example, summary of case no. OMB 2002/4610 in **Annex 12**.)

4.21 It is the view of our Office that, while departments should maximise the benefits of contracting-out and not micro-manage their contractors, prudent contract management with close monitoring of contractors' performance is essential to the maintenance of public accountability as well as service standards. This includes :

- stipulating clearly the expertise and experience required of contractors in tender specifications;
- ensuring that contracts are unequivocal on service standards, with safeguards and quality assurance for service recipients, say, by complaint mechanism;
- providing contractors with clear policy guidelines and operation manuals (drawn up in collaboration with the contractors where appropriate);
- briefing contractors' staff on departmental expectations; and
- monitoring diligently contractors' performance by regular surprise checks and evaluation system with awards and penalties.

4.22 In the final analysis, accountability remains with Government. It constitutes maladministration on the part of Government departments if their contractors are not prevented or stopped from providing sub-standard service to the public.

Inter-departmental Co-ordination

4.23 In my last Annual Report, I mentioned the problem of "buck-passing" among departments where inter-departmental co-ordination is called for. Such cases continued to surface this year. In a typical case, the complainant enquired about a ferry operator's application for development of passenger facilities on a public pier. Lands and Transport Departments kept telling the complainant to approach the other department as the responsible department, instead of conferring between themselves to arrive at a common stance on the matter. This left the complainant with nowhere to turn to. (See summary of case no. OMB 2003/2039 & 2040 in **Annex 12**.)

4.24 Another aspect of inter-departmental co-ordination is insufficient appreciation of the combined effect of different departmental policies on individual citizens. In a typical case, the Buildings Department (BD) issued an order for demolition of an illegal structure on a target building but, in accordance with established policy, not another at the same unit. Shortly after the owner of the unit had complied with the order and removed the first illegal structure, he received a cautionary advice from the Environmental Protection Department (EPD) for removing the second illegal structure, which contained asbestos. The complainant was confused and frustrated by BD's order and EPD's advice. The departments could have synchronised their action better. (See summary of case no. OMB 2003/2024 & 2025 in **Annex 12**.)

Reluctance in Enforcement

4.25 A number of departments demonstrated reluctance to take enforcement action after their repeated notices and even warnings had been ignored. In some cases, officers of the Food and Environmental Hygiene

Department (FEHD) were unable to gain entry on premises to investigate complaints of seepage because the owner or occupier of the premises either refused or ignored notices requesting entry. In law, FEHD officers could apply for warrants for entry. However, they were reluctant to take such enforcement action and instead, merely made repeated persuasive attempts. As a result, the complainant had to suffer for months without any answer regarding even the source of seepage.

4.26 In another, even more blatant case, a public housing tenant had for years been complaining to the Housing Department (HD) about seepage from the floor above. However, the tenant above was uncooperative and refused entry by HD officers for inspection. Over four years, HD issued 61 letters (including eight warnings) but still could not enter the floor above. Even so, HD did not exercise its authority under the tenancy agreement to issue a Notice to Quit to the uncooperative tenant to enforce its power of entry. Consequently, the complainant had to suffer the nuisance from seepage indefinitely. (See summary of case no. OMB 2003/1989 & 3238 in **Annex 12**.)

Hiding behind Prioritisation

4.27 We realise that in the face of manpower and resource constraints, Government departments need to prioritise their services. However, this is not licence to do nothing. We have repeatedly come across offices and officers with such attitude, notably in land administration, where "low priority" is tantamount to "no priority".

4.28 In a typical case, a person applied in late 1999 for use of a piece of land in the New Territories as storage shed. Normal processing time by the Lands Department for such applications is three months. However, as such applications are accorded low priority by the Department, that application was not processed until early April 2003 well over 40 months later, when the Department conducted an overall review and decided to process them according to the dates of application. Eventually, processing of the application in question was completed in June 2003.

4.29 We cannot accept inaction on the excuse of "low priority". First, members of the public are entitled to know the timeframe within which their applications will be processed. Second, when land applications are not processed for an inordinately long time, it is likely to encourage unlawful use of land.

Reports to the Chief Executive

4.30 In my last Annual Report, I reported that Housing, Planning and Lands Bureau (HPLB), BD and Lands Department had not adequately implemented our recommendations made in a 1996 direct investigation on the subject of unauthorised building works (UBW) in the New Territories. For this reason, I had invoked section 16(3) of The Ombudsman Ordinance and reported the matter to the Chief Executive, who directed HPLB to follow up. While HPLB reported the action that Government had taken, it did not appear to be adequate. To ascertain the actual situation, I declared a direct investigation again on the subject on 14 November 2003 (see **Fig. 3.2**).

Fig. 4.4

Section 16(3) of
The Ombudsman Ordinance

Where a report under subsection (1) to a head of the organisation is not, in the opinion of The Ombudsman, adequately acted upon –

(a) within the time specified in the report; or

(b) if no time is specified in the report, within such time as The Ombudsman is of the opinion is reasonable in all the circumstances,

The Ombudsman may submit the report and recommendations, together with such further observations as he thinks fit to make, to the Chief Executive.

4.31 Reporting to the Chief Executive is a step I do not take lightly. I much prefer seeing organisations concerned taking the initiative themselves to redress and improve matters.

Chapter 5

Caseload and Challenges

Caseload

5.1 Caseload for the year was as follows :

– 12,552 enquiries received;

– 4,661 complaints received; and

– 4,345 complaints concluded.

The community's pre-occupation with SARS in 2003 did not stem the flow of in-coming complaints in the year. However, SARS did cause a number of Government departments and organisations, notably the Hospital Authority, delay in responding to our investigations.

Fig. 5.1

Enquiries and Complaints since 1999/2000

Year	Enquiries	Complaints	
		Received	Concluded
1999/2000	9,323	3,101	3,411
2000/01	11,821	3,709	3,476
2001/02 (10 1/2 months*)	12,900	3,736	3,790
2002/03	14,298	4,382	4,370
2003/04	12,552	4,661	4,345

* From 2001/02, the reporting year ends on 31 March to coincide with the end of financial year.

Performance Pledges

5.2 Our performance pledges are set out below :

Fig. 5.2

Performance Pledges

Enquiries	**Range in Response Time (depending on complexity)**
By telephone or in person	Immediate - 30 minutes
In writing	5 - 10 working days
Complaints	**Range in Response Time (depending on complexity)**
Initial assessment and acknowledgement	All complaints will be initially screened and acknowledged – 5 - 10 working days
Cases concluded	Acknowledgment with a full reply declining investigation will be sent –
– Cases outside jurisdiction or under restriction	10 - 15 working days
– Other cases	3 - 6 months
Group Visits and Talks	**Response Time**
Requests for guided group visits	Within 5 working days
Requests for outreach talks	Within 10 working days

Caseload and Challenges

The volume of complaints received has kept the pressure on our investigation teams. However, we have endeavoured to complete cases within the pledges. The number of cases not meeting the performance pledges during the reporting period was 78 (or 3.18%), compared to 75 (or 2.84%) for the previous reporting year. Factors contributing to longer processing time included :

(a) highly complex cases necessitating more extensive search and elaborate investigation process;

(b) voluminous documents requiring extra time to distill relevant information;

(c) emergence of new developments mid-stream;

(d) suspension of investigation as the cases become subject to court or law enforcement action;

(e) argument and challenges, as described in the following paragraphs; and

(f) SARS caused some organisations to delay response to our inquiries (see **para 5.1**.)

Fig. 5.3

	Response Time		
Initial Assessment and Acknowledgement	Within 5 working days	Within 6-10 working days	More than 10 working days
1999/2000 (16.5.1999 – 15.5.2000)	99.86%	0.14%	0
2000/01 (16.5.2000 – 15.5.2001)	100.00%	0	0
2001/02	92.65%	5.85%	1.50%
2002/03	77.58%	11.84%	10.58%
2003/04	66.20%	30.74%	3.06%

	Cases Outside Jurisdiction or Under Restriction			Cases for Investigation		
Processing of Complaint	Within 10 working days	Within 11-15 working days	More than 15 working days	Less than 3 months	Within 3-6 months	More than 6 months
1999/2000 (16.5.1999-15.5.2000)	93.14%	4.54%	2.32%	45.00%	45.40%	9.60%
2000/01 (16.5.2000-15.5.2001)	80.80%	18.60%	0.60%	50.60%	44.00%	5.40%
2001/02	58.90%	37.60%	3.50%	52.20%	38.50%	9.30%
2002/03	60.65%	37.11%	2.24%	57.52%	39.64%	2.84%
2003/04	71.51%	22.10%	6.39%	51.08%	45.74%	3.18%

Argument and Challenges

5.3 Occasionally, organisations and complainants challenge our decisions or actions. Such argument and exchange inevitably result in longer time in processing cases.

Jurisdiction

5.4 Organisations at times challenge the propriety of our inquiries, particularly where the issues seem to impact on restrictions in Schedule 2 to The Ombudsman Ordinance, e.g. personnel or contractual matters. We are ever mindful to stay within our purview and would examine only such administrative aspects as delays and inefficiencies in such borderline cases. By this prudent but liberal approach, I hope to maximise our contribution to open government and client-oriented services.

5.5 In a case alleging delay by the Civil Service Bureau in a discipline matter, I was aware of the restriction upon me not to investigate personnel matters. However, in the face of the allegation of inordinate delay over years, I regarded that as possibly a matter of procedural inefficiency and lack of consideration for the complainants : in short, matters within my jurisdiction. Legal advice then confirmed that the present provision of the Ordinance precludes my acting at all, even on delay in personnel matters. I will, of course, abide by the law but keep an open mind as to whether such provision is unnecessarily restrictive, and may be contrary to the spirit of natural justice.

5.6 On the other hand, complainants sometimes question my decision to screen out their cases as falling outside our jurisdiction. They feel aggrieved by "self-evident" injustice to them, prolonged delay in redress of their concern. They could not accept, or understand, why The Ombudsman cannot even examine their case. To ease matters somewhat, where practicable, we redirect them to the appropriate authorities or avenues for advice, assistance or redress.

Secrecy vs Data Privacy in Evidence Collection

5.7 In the course of our inquiries, a few organisations were reluctant and dilatory in providing material for our scrutiny, on grounds of secrecy or data privacy, despite our statutory power to access any information relevant to a case. However, I am grateful that the organisations generally cooperate with my Office, although occasionally with some persuasion. I have also not had to summon unwilling witnesses during the reporting period but in one or two cases, we had to explain my powers to the individuals concerned before they would cooperate.

5.8 As explained in **Chapter 2**, the secrecy code in the Ordinance is the cornerstone of the ombudsman system and it enables us to obtain crucial information for effective investigation into allegations of maladministration. In the year under report, a complainant filed a request for access to copies of personal data documents we had collected from a Government department during our investigation of his complaint. I declined the request on the basis that I had already disclosed all information I deemed necessary and the rest was subject to the secrecy code under section 15 of The Ombudsman Ordinance. The Privacy

Commissioner for Personal Data, however, took the view that, because our secrecy code is not specifically referred to in the Personal Data (Privacy) Ordinance (PDPO), it is insufficient by itself as a ground for refusing such a request. However, the Privacy Commissioner accepts that documents covered by our secrecy code may be personal data exempted under section 58(1)(d) of the PDPO and hence that their access may be refused.

5.9 While the specific issue was resolved, I consider that the underlying conflict between PDPO and The Ombudsman Ordinance needs further examination.

Decisions

5.10 For full investigations, I inform the organisations concerned, normally in the form of draft reports, of any criticism or adverse comments against them or their staff. Now and then, organisations raise reservations or even objections to our observations, especially when the complaints are substantiated. Page after page of contentions and counter-points, followed by lengthy hearings, are common fare for my investigation officers. We endeavour to provide ample opportunities for organisations and their officers to make representations, which we carefully examine before finalising our conclusions. Where their representations are reasonable, we incorporate into the final report. Where they cannot be accepted, we still record their comments with our reasons for non-acceptance.

Lack of Response

5.11 Virtually all organisations invariably take our investigation reports seriously and, as noted above, provide substantial comments on our draft investigation reports when they do not agree with our findings or recommendations. Regrettably, this reporting year saw the first ever case in our history where we had to issue our final investigation report with no comment from the department concerned. This was the Lands Department (Lands D), which just failed to comment despite repeated reminders and a generous extended response period of almost three months. In the event, I decided to issue the final report lest it would be grossly unfair to the complainant. Such blatant lack of cooperation from a Government department suggests to us some deeper problem with its organisational culture. In this connection, I have addressed the Director of Lands.

Revived Cases

5.12 From time to time, complainants are dissatisfied with our investigation results, particularly if their complaints are found to be unsubstantiated. In their disappointment, some request for review of their cases. A few have raised allegations against individual investigation officer for being biased, incomplete or incompetent. As all investigation reports are subject to my personal scrutiny and approval, such allegations can be seen as complaints against my decisions, not my officers.

5.13 Factors prompting complainants to seek review may be summarised as follows :

(a) rising expectations of our community for service;

(b) intuitive conviction over their own view of matters;

(c) expectation of The Ombudsman being advocate for complainants only; and

(d) desire for putting pressure on the organisations concerned.

5.14 We treat each and every objection as an appeal. We review the case for any fresh evidence or new angle. We endeavour to address all specific points in our response. Where new information comes to light, we re-open investigation. Special procedures apply in the handling of revived cases. Whilst the original investigation officer will be required to comment on the complainant's grounds for review, the actual review will be carried out by another investigation officer or by the Chief Investigation Officer. As a rule, draft replies to requests for review must be vetted by my Deputy before coming to me for final scrutiny and decision.

5.15 In the reporting period, we received 359 requests for review, compared to 280 in the last reporting period. The increase of 28.2% might reflect our complainants being more aware of the option to seek review of their cases. Most complainants simply reiterated their arguments and expressed dissatisfaction with our conclusions. However, where they produced new materials or perspectives, we studied afresh and were ready to revise our original decision. In the report period, 14 (or 3.9%) out of 359 cases reviewed resulted in revision of the decision.

Fig. 5.4

Revived Cases

Reason / Result	New Evidence		New Perspective		Outside Jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	2	–	12	–	–	14
Decision upheld	–	306	–	–	39	345
						359

5.16 A number of persistent complainants have chosen to vent their discontent through a continuous stream of letters or by numerous daily telephone calls to my staff at different ranks. We understand, and we can sympathise, with their sentiments. However, our primary duty is to ensure fairness to both the complainants and the organisations concerned. This is the spirit of the Ordinance and the intent of our institution. It does not accord with justice or use public resources properly

to engage in endless debate over the same points day after day. We will review only on the basis of new evidence or fresh arguments. We cannot respond indefinitely to repeated requests for review.

Overview

5.17 In general, we regard challenge of our views or conclusions as a healthy reminder to sharpen our vigilance and to enhance our professionalism. We endeavour to ensure that our investigations are thorough and impartial. We are ready to take a further look at objective facts from different angles. However, we do not bow to pressure, submit to irrationality or aid and abet in personal vendetta.

Findings and Fruits of Investigation

Major Forms of Maladministration

6.1 Most complaints concluded in the reporting period were against the organisations for "error, wrong decision or advice" (31.2%), followed by "failure to follow procedures or delay" (10.2%). In other words, public perception sees these as the topmost common forms of maladministration. However, complaints found to be substantiated or partially substantiated after full investigation[1] were "failure to follow procedures or delay" and "negligence, omission". Details are tabulated below :

Fig. 6.1

Nature of Allegation / Maladministration Identified	% Among All Concluded Cases@	% Among All Acts of Maladministration Substantiated#
Error, wrong decision or advice	31.20%	14.90%
Failure to follow procedures, delay	10.20%	21.30%
Lack of response to complaint	6.90%	2.10%
Staff attitude	6.40%	6.40%
Negligence, omissions	6.00%	21.30%
Disparity in treatment, unfairness	5.70%	8.51%

@ There were a total of 4,661 concluded case in 2003/04, including cases outside jurisdiction, restricted or concluded after preliminary inquiry, mediation or full investigation (see Table 1).

There were 47 allegations substantiated after full investigation in 2003/04.

The Ombudsman's Recommendations

6.2 The Ombudsman Ordinance requires The Ombudsman after a full investigation to report findings, to give opinions with reasons and to make recommendations. My recommendations fall broadly into two categories, namely :

(a) Redress of grievances –
to right specific wrongs, including remedial measures, immediate and longer-term;

(b) Administrative improvement –
to improve the administration of an organisation in general or in specific areas such as changes to systems, procedures and practices for removing administrative errors, loopholes or deficiencies.

I respect the relevant authorities for formulation of policies but I do from time to time comment on policies: to focus on outdated aspects or to generate public debate.

6.3 A substantial number of complaints are directed against the actions or attitude of individual officers. To enhance the quality of public administration, recommendations from our investigations are generally preventive rather than punitive in nature. Accordingly, we rarely propose disciplinary action against individual officers as we believe this is a matter for the heads of the organisations. In short, we seek to improve rather than to disapprove, to comment constructively and not to carp critically.

1 As opposed to preliminary inquiries, which include INCH and RAC, and mediation.

6.4 If an investigation report is, in my opinion, not adequately acted upon by the head of the organisation concerned, The Ombudsman Ordinance provides that I may submit my report and recommendations together with any further observations to the Chief Executive. I may also make a further report to the Chief Executive if I consider a serious irregularity or injustice to have taken place and, within one month or such longer period as the Chief Executive may determine, a copy of such further report shall be laid before the Legislative Council.

Government Minute on Implementation

6.5 Since 1995, the Administration has been submitting a Government Minute to the Legislative Council within three months after the tabling of The Ombudsman's Annual Report. This summarises the follow-up actions taken by Government departments and statutory organisations to implement The Ombudsman's recommendations. It is a measure of the seriousness with which the Administration views the role of The Ombudsman in promoting open and fair, responsive and responsible government.

Implementation of Recommendations

6.6 Properly conducted investigations and carefully considered recommendations are key to our work processes. An indicator of our achievement is the number of recommendations for improvement made by me and accepted for implementation by the organisations. In the 2003/04 reporting year, my Office completed 284 full investigations and five direct investigations, with 121 and 88 recommendations respectively or a total of 209 together. 197 (or 94.3%) of them have been accepted by the organisations concerned with 9 (or 4.3%) were still under consideration by them. Each recommendation, when implemented, results in improvement to public administration and better services to the community.

Fig. 6.2
Number of Recommendations

Year	From Complaint Investigation	From Direct Investigation	Total
1999/2000	108	30	138
2000/01	131	59	190
2001/02 (10 1/2 months)	166	70	236
2002/03	173	72	245
2003/04	121	88	209

6.7 In the reporting period, we concluded 1,834 cases after preliminary inquiries, including 203 cases by INCH and 1,631 by RAC, with a total of 223 suggestions to the organisations concerned for remedial actions or administrative improvement. It is noteworthy that oftentimes, organisations would conduct their own internal audit and even introduce improvement measures in the course of our investigation. We welcome and appreciate such "headstart" by the organisations and see ourselves as carrying catalytic influence. In this light, we pay tribute to complainants for raising their cases and thus contributing to better quality services.

Enhancement of Quality Administration

6.8 Implementation of our recommendations and suggestions for administrative improvement has helped to enhance public administration in a number of areas, as shown in **Fig. 6.3** below:

Fig. 6.3

Examples of Improved Public Administration

Area of Improvement	Example
(1) Clear guidelines for clarity, consistency and efficiency in operation	Housing Department (HD) investigated a case of forged document to apply for rental housing. Among other things, the subject officer made a wrong determination of the date of discovery of the offence. As a result, prosecution action turned out to be time-barred. HD had arrangements for supervisors to confirm Statutory Time Barred Dates. This counter-check did not function because the subject officer was doubling up his supervisor's post when handling the case. Following our recommendation HD issued clear guidelines to ensure similar mistakes would not recur.
(2) Better arrangement for inter-organisational coordination	A flat owner received from Buildings Department (BD), separately over nine months, demotion orders and advisory letters in respect of three illegal structures. He felt aggrieved by the time difference of such orders and letters, which caused him extra time and costs in compliance. Our investigation found that the orders and letters were issued on different types of illegal structures by three different sections within BD. While two units coordinated prior to action, inadequate coordination was observed in respect of the third unit. On our recommendation, BD issued clear internal guidelines to ensure better synchronization in issuing orders and advisory letters to the same owner.

Area of Improvement	Example
(3) Measures adopted for better public enquiry / complaint handling	Complainant was dissatisfied with the service of an Internet Service Provider (ISP) and complained to the Office of Telecommunication Authority (OFTA). OFTA inquired into the complaint but expressed that it would only investigate cases of non-compliance with the Telecommunication Ordinance. Complainant considered OFTA not having properly taken up its regulatory duties. We found OFTA to have properly followed up the complaint but had not given clear guidelines that it would not take up complaints that concern only contracts between ISPs and their customers. Following our recommendation, OFTA issued clear guidelines both for internal use and public reference.
(4) Training and guidelines for staff	On HD advice, owners of a Home Ownership Scheme Scheme decided to form themselves into owners' corporation (OC). The development's different blocks had been constructed at different times and so had different deeds of mutual covenant. Consequently, the owners had to form two owners'corporations. For this, the original estate management fund had to be split. HD advised that this could be done within three months after the formation of the two OCs. However, this could not be realized because HD staff had under-estimated the complexity of splitting the accounts. For future improvement, on our recommendation, HD provided clear guidelines and training for staff.
(5) Measures for better services	A couple wanted to report suspected abuse of Comprehensive Social Security Assistance (CSSA) to a Field Unit (FU) of Social Welfare Department (SWD), but were advised to report the case to SWD's Fraud Investigation Team (FIT). Although our investigation found their allegation that the FU was unwilling to receive their report unsubstantiated, we did find a lack of communication between FU and FIT. There was also no clear advice to the public

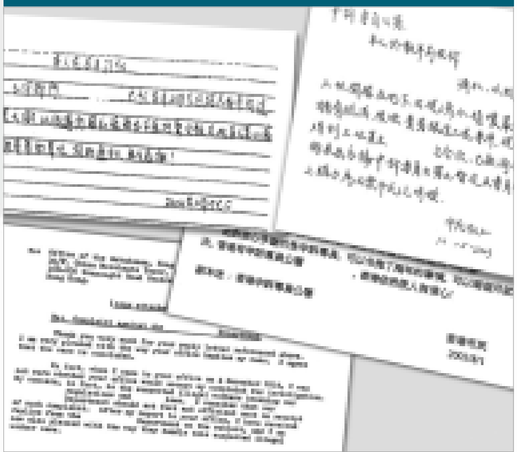
Area of Improvement	Example
	that after they had reported to FU, they need not report again to FIT, or vice versa. On our recommendation, SWD introduced a one-stop service for receiving CSSA abuse reports and provided information to the public about this.
(6) More and clearer information to the public	On a Tuesday when the Executive Council (ExCo) was in session, the complainant went to the Central Government Offices (CGO) to petition but was stopped by the staff there on the ground of no prior application. She felt aggrieved, as petitions by individuals did not need prior application. We found that Government's published Guidance Notes on the subject mentioned only the existence of special arrangements for petitions on ExCo meeting days but gave no details. Also, it was unclear whether the arrangements were applicable also to individuals. On our suggestion, the Chief Secretary for Administration's Office revised the Guidance Notes to include details of such special arrangements and make it clear that they apply to both groups and individuals.

Acknowledgement of Our Services

6.9 From time to time, we receive letters of appreciation from complainants and organisations, e.g. on the thoroughness and impartiality of our investigation. We value such acknowledgement as encouragement for our further improvement. We also welcome any constructive comment on our services.

Fig. 6.4

Extracts from Letters of Appreciation



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Findings and Fruits of Investigation

Positive Complaint Culture

6.10 Unquestionably, complaints originate from grievance or dissatisfaction but this does not render complaints necessarily a negative product. A complaint made in good faith is due exercise of a citizen's rights. A valid complaint is a useful reminder to Government to re-visit policies, procedures and practices with The Ombudsman as referee. Complaints are opportunities to review and revamp, redress and reform. Public administration could and should evolve, develop and improve.

6.11 Over the years, we have been promoting a positive complaint culture with both the public and the organisations in Schedule 1 to the Ordinance. Our activities for public awareness and education are described in **Chapter 7**.

Chapter 7

Public Education and External Relations

7.1 In pursuance of our statutory functions, we develop community programmes for promoting public awareness and understanding of the work of our Office. More specifically, our efforts in public information and education aim to achieve the purposes below:

- to publicise our functions and services;
- to foster a positive culture of proactive service among public officers; and
- to promote a positive complaint culture in the public sector and in our community.

The outbreak of the Severe Acute Respiratory Syndrome (SARS) in the first half of 2003 affected our scheduling of programmes. For health precautions, we revised the level and timing of group activities such as workshops, outreach talks and visits.

Public Information

7.2 We launched publicity from November 2003 to January 2004 through TV and radio broadcasts, messages on public buses and trains to remind the public what, where and how to complain to The Ombudsman. To achieve greater exposure, we placed more spots this year. To reinforce our public education efforts, we mounted roving exhibitions in nine public areas with high pedestrian traffic such as Mass Transit Railway (MTR) stations, shopping malls and public housing estates.

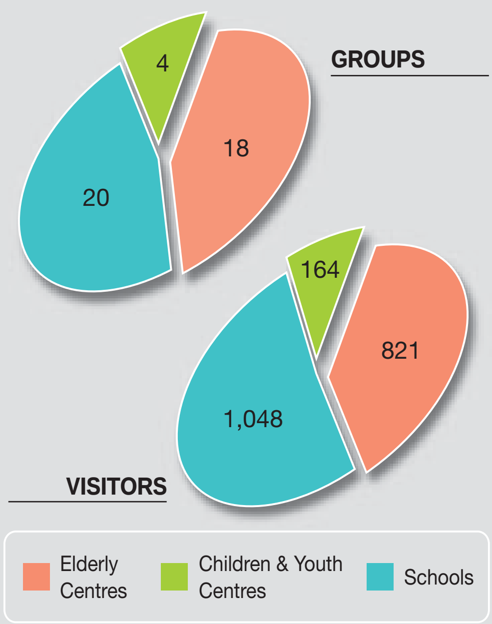
Resource Centre

7.3 Our Resource Centre houses our publications and a rich collection of Ombudsman-related literature. Over 200 new publications were added to our stock this year.

7.4 We welcome individuals and groups to the Centre. A group visit normally comprises a tour of the Centre, followed by a briefing and exchange of views with representatives of this Office. A total of 2,033 persons from 42 groups visited the Centre in the year, compared to 2,167 and 39 respectively in the previous year.

Fig. 7.1

Group Visits to Resource Centre



Information Materials

7.5 Our stock of materials go back some years and so from time to time we update our booklets, leaflets and CD-roms with interactive quiz games. Our publications on direct investigation and performance pledges have been reprinted with updated information. Others, on mediation service and "Tips for making a proper complaint",

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are under review. Meanwhile, we are producing a new information video on our purview, functions and powers, to be ready by mid-2004. It will be shown to visitors at our Resource Centre and as an introduction for outreach talks.

7.6 Members of the public may visit our website *www.ombudsman.gov.hk* for information on this Office. There, they can browse through our publications, such as our Annual Reports, Ombuds News and details of our latest activities as well as The Ombudsman Ordinance. They can also test their understanding of this Office through the interactive computer game launched in May 2003. We update the website regularly so that our community can be kept abreast with our work and development.

Media Relations

7.7 After investigating a case, The Ombudsman may, in the public interest, publish a report on the investigation. In this connection, we anonymise selected cases for announcement and also publish our direct investigations to encourage good administration and promote quality service in the public sector. Summaries of our findings are carried in our periodical newsletter, "Ombuds News", for distribution to the media at The Ombudsman's press conferences about once every six to eight weeks.

7.8 This year, we announced the results of five direct investigations and six cases of complaints investigated.

Fig. 7.2



The Ombudsman at a press conference

Fig. 7.3

Press Conferences

22 May 2003

- Announcement of findings of direct investigation into enforcement of the Education Ordinance on universal basic education
- Declaration of direct investigation into prevention of abuse of the Comprehensive Social Security Assistance Scheme

2 July 2003

- Publication of 15th Annual Report
- Announcement of findings of direct investigation into operations of the Integrated Call Centre
- Declaration of direct investigation into assistance provided by Home Affairs Department to owners and owners' corporations in managing and maintaining their buildings

21 August 2003

- Announcement of two anonymised complaints:
  - against Housing Department for ineffective supervision of property service company, resulting in prolonged occupation of venues in a public housing estate
  - against Home Affairs Department for maladministration in assisting an owner to obtain the ownership records of an estate free of charge

14 November 2003

- Announcement of findings of direct investigation into assistance provided by Home Affairs Department to owners and owners' corporations in managing and maintaining their buildings
- Declaration of three direct investigations into:
  - Education and Manpower Bureau's arrangements for surplus teachers in aided primary schools for 2003/04
  - handling of examination scripts under marking
  - enforcement action on unauthorized building works in New Territories exempted houses

18 December 2003

- Announcement of findings of direct investigation into prevention of abuse of the Comprehensive Social Security Assistance Scheme
- Announcement of an anonymised complaint
  - against Food and Environmental Hygiene Department for impropriety in handling the withdrawal of an application for transfer of food business license
- Declaration of direct investigation into enforcement of the Building Management Ordinance

14 January 2004

- Announcement of two anonymised complaints:
  - against Housing Department for delay in processing a report on using a forged document to apply for public housing
  - against Buildings Department for impropriety in carrying out emergency works

4 March 2004

- Announcement of two anonymised complaints against Housing Department:
  - for delay in resolving seepage on the ceiling; and
  - for unfair treatment to the tenant alleged to cause the seepage
- Announcement of findings of direct investigation into handling of examination scripts under marking

Public Education and External Relations

From time to time, The Ombudsman accepts invitations for interview by members of the media, print and electronic. They are important commentators on our work and provide important channels for public information and community feedback for our Office.

Meeting with Legislative Councillors

7.9 We maintain close contact with community leaders and organisations to enlist their support for our work. The Ombudsman attended meetings with Members of the Legislative Council in December 2003 and February 2004 to update them on developments and initiatives of the Office.

Meeting with Chairmen of District Councils

7.10 District Councils are a good avenue for The Ombudsman to take the pulse of the community. As before, with the assistance of the Permanent Secretary for Home Affairs, The Ombudsman met with the Chairmen and Vice-Chairmen of District Councils in March 2004. Exchange with these representatives from different districts offers a good opportunity to explain our functions and to obtain feedback on issues of community concern.

Assistance from Justices of the Peace

7.11 359 Justices of the Peace (JPs) have enrolled in our JP Assistance Scheme, launched in 1996 to enlist their support in promoting the ombudsman system by referring complaints and drawing attention to areas of concern or deficiencies in public administration. They take part in our functions and are thus kept abreast with our work and developments. During the year, we arranged two orientation visits for the JPs — the Hong Kong Central Library and the Hong Kong Observatory. Participants find such visits useful for insight into different facets of Government administration. We rely on them for warm support and for suggestions to improve our services and public administration in general.

Fig. 7.4



JPs visiting the Hong Kong Central Library

The Ombudsman Awards

7.12 The Awards seek to recognise professionalism in complaint handling and to foster a positive culture in the public sector. First introduced in 1997, they have been presented to public organisations displaying a positive and responsive stance to the investigations conducted by The Ombudsman. Since 1999, the Scheme has been extended to mark the efforts of individual public officers for their display of fairness, impartiality and efficiency in service and since 2000, also to public officers who contribute significantly towards improvement to public service through the handling of complaints over a sustained period of time.

7.13 All nominations are considered by a selection panel, chaired by the Deputy Ombudsman and comprising the two Assistant Ombudsmen and heads of the investigation teams and the external relations unit. Public organisations are assessed on the basis of their handling of complaints referred by this Office, their cooperation in responding to our requests for information and their commitment to improving the quality of their services, including implementation of The Ombudsman's recommendations. Public officers are nominated by their organisations as exemplary in achieving a good standard of customer service or in making significant improvement to the quality of complaints handling over a sustained period of time.

7.14 We hosted our annual Ombudsman Awards presentation ceremony in September 2003. A total of 21 public officers from 11 organisations were honoured on that occasion.

Fig. 7.5



Winners of The Ombudsman Awards for public organisation with The Ombudsman

Fig. 7.6

Winning Organisations for 2003

Transport Department (Grand Award)
Food and Environmental Hygiene Department
Post Office

Fig. 7.7

Individual Awards for 2003

Organisations	Awards
Customs & Excise Department	2
Electrical and Mechanical Services Department	1
Food and Environmental Hygiene Department	1
Government Flying Service	1
Hospital Authority	2
Housing Department	3
Immigration Department	2
Inland Revenue Department	3
Mandatory Provident Fund Schemes Authority	2
Social Welfare Department	1
Water Supplies Department	3

Nominations for the awards in 2004 will shortly be invited.

Complaint Management Workshop

7.15 Our annual Complaint Management Workshop, originally scheduled for April 2003, was postponed to December due to SARS. The event aims at improving

professionalism in handling complaints, promoting a constructive view of complaints and cultivating a positive complaint management culture among public officers. We see complaints as opportunities for review and revision of procedures and practices, at times even revamp of policies.

7.16 Experts invited to share their experience this year spoke on the theme "Cooperation or Confrontation?". There were also interactive workshops for exchange of views on special topics, including feedback from participants on our work processes and practices. About 300 public officers attended the workshop although initial applications exceeded capacity considerably.

Fig. 7.8



Mr. Roger Luk, JP, Managing Director and Deputy Chief Executive of Hang Seng Bank Limited (right) speaking at the Complaint Management Workshop

Outreach Talks and In-service Training

7.17 Complaint handling is an integral part of public services. Most public officers, particularly those in the frontline, have to deal with complaints in the course of their career and are often subjects of complaint themselves. To meet their operational needs, we conduct talks and training for Government departments and universities. During the year, we gave seven talks including one on mediation. Senior officers from this Office introduced the work of this Office and answered questions on our jurisdiction and operations.

Institutional Liaison

7.18 Maintaining liaison with overseas ombudsman offices and international ombudsman organisations is important for the professional development of any effective ombudsman system. Regular exchange of ideas, methodologies and experience helps to enhance professionalism, cultivate relationship and open new perspectives for future planning. The Hong Kong Ombudsman is a member of the International Ombudsman Institute (IOI) and a founding member of the Asian Ombudsman Association (AOA). The Ombudsman participates actively in their activities.

7.19 The Ombudsman has been a Director of the IOI - representing the Australasian and Pacific Region - since 1996 (except 1999), and the Secretary to the IOI since October 2002. In September 2003, The Ombudsman attended the IOI Board of Directors' Meeting in Quebec, Canada and the 21st Australasian and Pacific Ombudsman Conference (APOR) of the Institute in Madang, Papua, New Guinea.

7.20 As Secretary to the AOA, The Ombudsman attended the Board of Directors' Meeting in Macau in October 2003 and the Sub-Committee meeting in Islamabad, Pakistan in February 2004.

Public Education and External Relations

Exchanges with the Mainland

7.21 We maintain regular exchange with the China Supervision Institute. Members of the Institute visited Hong Kong in December 2002 and The Ombudsman led a delegation to the Mainland in November 2003 for a week. We shared knowledge and experience about our respective systems and practices in monitoring public administration with our counterparts in Beijing, Guilin and Chengdu.

Fig. 7.9



The Ombudsman meeting Mr. Huang Shuxian, Vice-Minister of Supervision, Ministry of Supervision

7.22 From time to time, groups of Mainland officials and academics attend training courses in Hong Kong, which invariably include a half-day visit to this Office. We are also pleased to receive groups from local government departments and public organisations. Our directorate officers give talks to these visiting groups. During the reporting period, we received and delivered talks to 21 groups comprising 378 members.

7.23 In January 2004, The Ombudsman was invited in the capacity as an Ombudsman in Asia-Pacific Region to speak in an international conference organised by Swedish International Development Cooperation Agency (Sida) in Ulaanbaatar, Mongolia on "Good Governance". The Ombudsman shared knowledge with, and offered professional advice on establishing ombudsman system to, the legislative and administrative bodies of the country.

7.24 Lists of visits to the Office and overseas conferences are at **Annex 15 & 16** respectively.

Thematic Household Survey

7.25 From time to time, our Office samples community feedback on our services through the Thematic Household Surveys organised by the Census and Statistics Department. The surveys serve to collect data on public awareness and perception of the work of the Office. The findings also enable us to gauge public expectations and to meet their aspirations for quality public administration. The reports also guide us in our public information and education strategies.

7.26 The latest survey was carried out during March to May 2003, three years after the previous completed in early 2000. Some 8,000 households were interviewed. About 72% of the respondents indicated that they were aware of the work of this Office, representing a 7% increase compared to the result of the previous survey. This survey also indicated that this Office was one of the main complaint channels of the public. The results of the survey were encouraging as they endorsed our public information and community relations strategies over the years.

7.27 They have also highlighted pointers for review of our strategy: those more educated and economically active tend to approach this Office; telephone is the preferred channel for lodging complaints; livelihood issues are most complainants' concern; many are not aware of our power to conduct direct investigation. We shall tailor the strategy for our coming publicity and operation plan accordingly.

7.28 The summary of findings is at **Annex 13**.

7.29 Meanwhile, a survey on the "State of Cohesion in Hong Kong" conducted by The University of Hong Kong (HKU) interviewed 1,054 respondents aged 18 or above from mid-August to October 2003. The findings from this study of public confidence in various institutions of governance and monitoring agencies were quite encouraging. Our Office ranked only after the Independent Commission Against Corruption (ICAC).

Fig. 7.10

Mean Scores of Confidence in Institutions of Governance and Monitoring Agencies from HKU Survey

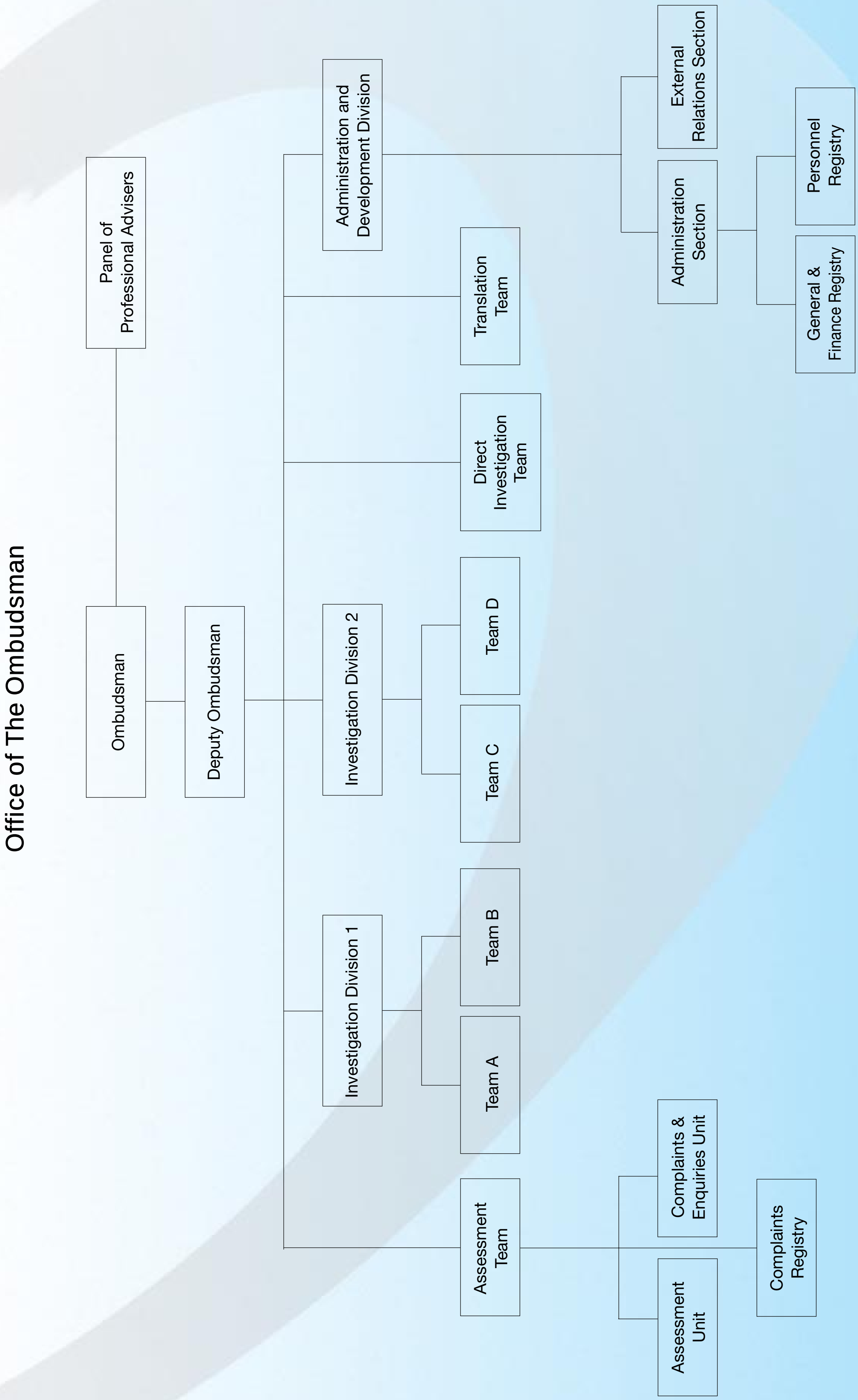
	Mean*
ICAC	8.15
The Ombudsman	7.47
Police	7.08
Judicial System	6.75

* From a range of 1 to 10: 1 indicating lack of confidence and 10 full confidence

7.30 In the coming year, we plan to conduct a client opinion survey to enable us to target our services better. We will continue to enhance the awareness of our presence among different sectors and information on access to our services.

Annex 1

Organisation Chart



The Ombudsman 申訴專員

Glossary of Terms

Complaint

A complaint is a specific allegation against an organisation, or staff of the organisation, for any wrong doing or defective decision / action which affects and aggrieves the complainant either personally as an individual or collectively as a body corporate.

Direct Investigation

This refers to an investigation initiated under section 7(1) of The Ombudsman Ordinance in the absence of a complaint.

Direct Investigation Assessment

This refers to the examination of an issue in the public interest or of community concern which has been identified as a potential subject for direct investigation. The assessment includes collection of background information, appraisal of the extent of public concern and consideration of the remedial actions by the relevant authorities.

Discontinuation of Complaint

This refers to The Ombudsman not pursuing a complaint in accordance with section 10(2) of The Ombudsman Ordinance because:

(a) the complaint has previously been investigated and found unsubstantiated;
(b) the subject matter of the complaint is trivial;
(c) the complaint is frivolous, vexatious or is not made in good faith; or
(d) investigation or further investigation is deemed unnecessary.

Enquiry

An enquiry is a request for information or advice. It is *not* a complaint.

Full Investigation

This refers to an investigation initiated under section 7(1) of The Ombudsman Ordinance upon receipt of a complaint.

Glossary of Terms

Incapable of Determination

This refers to the situation where, at the end of an investigation, no conclusion can be drawn on a complaint because the evidence is conflicting, irreconcilable, incomplete or lacking in corroboration from independent witnesses. In short, the case is inconclusive.

Internal Complaint Handling Programme (INCH)

This refers to a form of preliminary inquiry whereby, with the consent of the complainant, a simple case is referred to the organisation concerned for investigation and reply direct to the complainant, with a copy to The Ombudsman. In such cases, The Ombudsman may request the organisation to provide specific information in its reply, monitors the process and scrutinises the reply, intervening where the reply is not satisfactory.

Investigation

This refers to an investigation under section 7(1) of The Ombudsman Ordinance. This may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

"Maladministration" is defined in section 2 of The Ombudsman Ordinance. Basically, it means bad, inefficient or improper administration and includes: unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration action for an affected person.

Mediation

This refers to a voluntary process carried out under section 11B of The Ombudsman Ordinance where the complainant and representative of the organisation concerned agree to meet to explore a mutually acceptable solution to a problem. Investigators from this Office act as impartial facilitators of the dialogue.

Outside Jurisdiction

This refers to the situation where an action is not subject to investigation by The Ombudsman by reason of section 8 read with Schedule 2 to The Ombudsman Ordinance.

Annex 2

Glossary of Terms

Partially Substantiated

This refers to the degree to which an action / inaction / decision under complaint is found, at the end of an investigation, to be within the meaning of "maladministration" as defined in section 2 of The Ombudsman Ordinance. If maladministration is found in only one or some of the aspects, the complaint would be partially substantiated.

Potential Complaint

This refers to an anonymous complaint or a complaint addressed to an organisation and only copied to The Ombudsman. Such cases are regarded as not meant for action at all or for the time being. However, The Ombudsman may intervene if the organisation concerned fails to follow up appropriately.

Preliminary Inquiries

These refer to inquiries conducted under section 11A of The Ombudsman Ordinance for the purposes of determining whether a full investigation should be conducted.

Rendering Assistance / Clarification (RAC)

This refers to a form of preliminary inquiry under which this Office collects all the facts from the organisation under complaint. If the facts fully explain the matter under complaint, the findings and observations will be presented to the complainant, with suggestions to the organisation concerned on remedial action and improvement, where appropriate. If further action is called for, a full investigation will be conducted.

Restrictions on Investigation

These refer to restrictions on investigation as set out in section 10 of The Ombudsman Ordinance.

Substantiated

This refers to the degree to which the action / inaction / decision under complaint is found, at the end of an investigation, to be within the meaning of "maladministration" as defined in section 2 of The Ombudsman Ordinance. If all aspects taken together show that there is maladministration, the complaint would be substantiated.

Glossary of Terms

Substantiated other than Alleged

This refers to the situation where The Ombudsman finds the complainant's allegations to be unsubstantiated but in the course of investigation, discovers other aspects of significant maladministration. In such a case, The Ombudsman will criticise those other deficiencies, even in the absence of a specific complaint on those points, and conclude the case as substantiated other than alleged.

Unsubstantiated

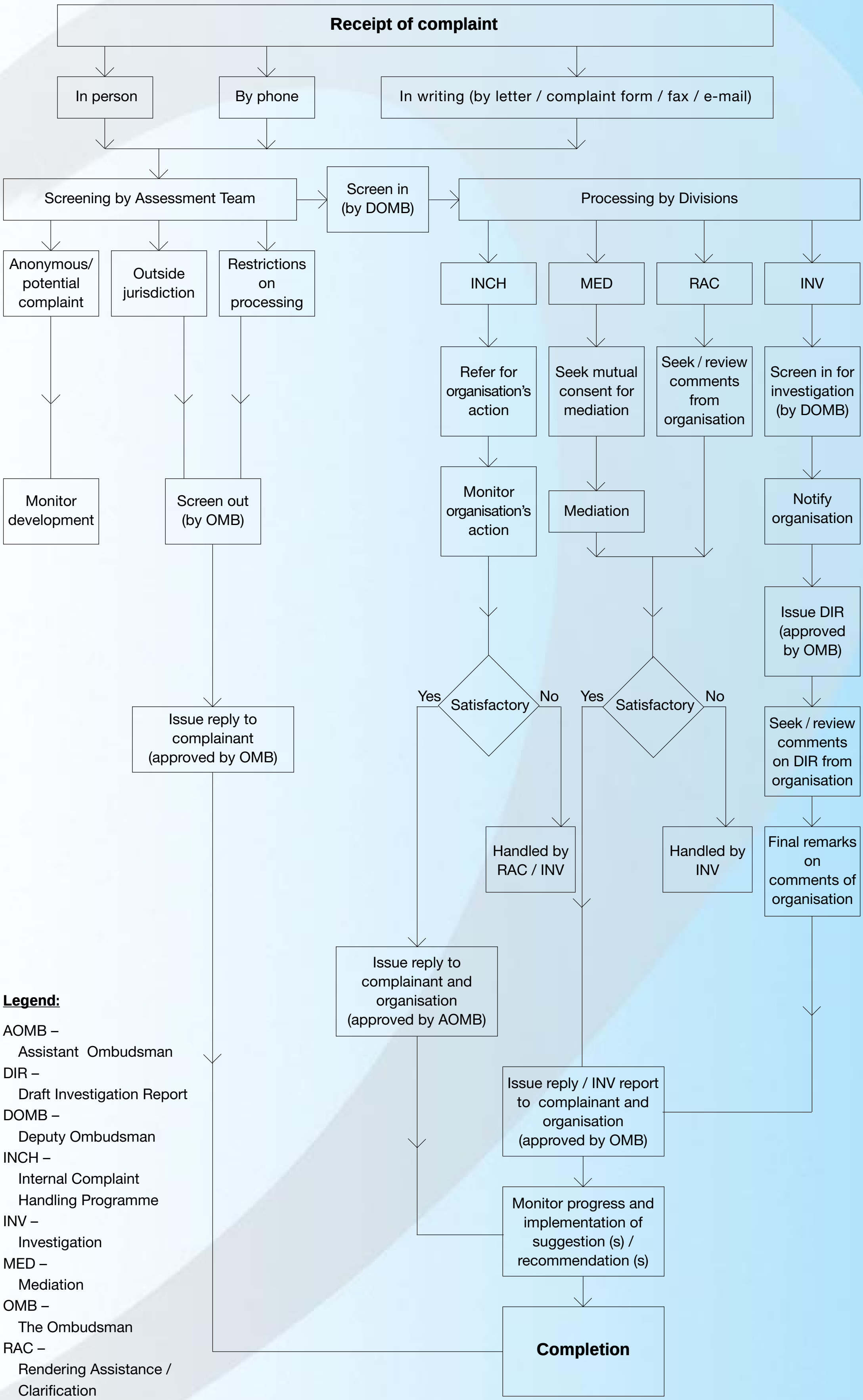
This refers to the degree to which the action / inaction / decision under complaint is found, at the end of an investigation, to be within the meaning of "maladministration" as defined in section 2 of The Ombudsman Ordinance. If no maladministration is found, the complaint would be unsubstantiated.

Withdrawal of Complaint

This refers to a complainant voluntarily withdrawing a case. However, The Ombudsman may decide to continue the investigation if the nature or gravity of the complaint should so warrant.

Annex 3

Flow Chart on Handling of a Complaint



Legend:

AOMB – Assistant Ombudsman
DIR – Draft Investigation Report
DOMB – Deputy Ombudsman
INCH – Internal Complaint Handling Programme
INV – Investigation
MED – Mediation
OMB – The Ombudsman
RAC – Rendering Assistance / Clarification

Annex 4

Achievement of Performance Pledges (1April 2003 to 31 March 2004)

(A) Enquiries

	Response time		
By telephone or in person	Immediate	Within 30 minutes	More than 30 minutes
	10,423 (100%)	0	0
In writing	Within 5 working days	Within 6-10 working days	More than 10 working days
	54 (100%)	0	0

Note: The above figures exclude enquiries on existing complaints.

(B) Complaints

	Response time		
Initial assessment and acknowledgement*	Within 5 working days (target: 80%)	Within 6-10 working days (target: 20%)	More than 10 working days
	1,167 (66.20%)	542 (30.74%)	54 (3.06%)

* Excluding potential complaints and cases outside jurisdiction or under restriction.

	Cases outside jurisdiction or under restriction			Other cases		
Cases concluded	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)	More than 15 working days	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)	More than 6 months
	783 (71.51%)	242 (22.10%)	70 (6.39%)	1,253 (51.08%)	1,122 (45.74%)	78 (3.18%)

(C) Group visits and talks

	Response time	
Requests for guided group visits	Within 5 working days	More than 5 working days
	41 (100%)	0
Requests for outreach talks	Within 10 working days	More than 10 working days
	5 (100%)	0

The Ombudsman 申訴專員

Guidelines for Initiating Direct Investigations

Under section 7(1)(a)(ii) of The Ombudsman Ordinance, The Ombudsman is empowered to initiate investigations of his own volition, even though no complaint on the matter has been received.

This power enables The Ombudsman to be more proactive in the approach to problems of wide public interest and concern. It is particularly useful to:

(a) follow through systemic problems which investigation of a complaint alone may not resolve;

(b) nip problems in the bud by addressing deficiencies in systems and procedures; and

(c) resolve repeated complaints, once and for all, by addressing the fundamental problems which may not be the subject of complaints, but are believed or suspected to be the underlying reasons for complaint.

To facilitate consideration of matters for direct investigation, The Ombudsman has established some general guidelines:

(a) the matter concerns public administration and involve alleged or suspected maladministration as defined in The Ombudsman Ordinance;

(b) the matter should be of sufficient dimension and complexity, representing the general interest, desire or expectation of the community, or at least a sector in the community;

(c) individual grievances will normally not be a candidate for direct investigation, as there is no reason why the individual concerned cannot come lodge a complaint personally;

(d) the matter will otherwise not be actionable under the restrictions in section 10(1) of The Ombudsman Ordinance, e.g. time bar, not the aggrieved person, but is nevertheless of grave concern to The Ombudsman;

(e) the matter is normally not subject to the jurisdiction of the Court or a tribunal constituted under any Ordinance *or* it would not be reasonable to expect the affected person(s) to resort to the Court or any tribunal for remedy; and

(f) the time is opportune for a direct investigation, weighing against the consequences of not doing so.

These are no more than guidelines and are by no means exhaustive. Much will depend on the actual matter or problems.

Annex 6

List of Direct Investigations Completed

1994 / 1995

1. Unauthorised building works

1995 / 1996

2. Overcrowding relief in public housing
3. Accommodation for foreign domestic helpers
4. Unauthorised building works in New Territories exempted houses

1996 / 1997

5. Provision of emergency vehicular access and fire services installations and equipment for public and private building developments
6. Problem of water main bursts
7. Co-ordination between the Social Welfare Department and the Housing Department in processing application for housing transfer on social grounds
8. Selected issues on general out-patient service in public clinics and hospitals
9. The Education Department failing to complete, on a timely basis, the processing of an application from a hearing impaired student to attend a special school

1997 / 1998

10. Government telephone enquiry hotline services
11. Fisheries Development Loan Fund administered by the Agriculture and Fisheries Department
12. Arrangement for the closure of schools due to heavy persistent rain
13. Issue and sale of special stamps and philatelic products
14. Taxi licensing system

List of Direct Investigations Completed

1997 / 1998 (cont'd)

15. Co-ordination between the Drainage Services Department and the Environmental Protection Department over the protection of public beaches from being polluted by sewage discharges

16. Charging of management fees in Home Ownership Scheme Estates managed by the Housing Department

1998 / 1999

17. Dispensary service of the Department of Health

18. Handling of trade documents by the Trade Department

19. Recovery of public rental flats under the Home Ownership Scheme, the Private Sector Participation Scheme and the Home Purchase Loan Scheme by the Housing Department

20. Registration of tutorial schools

21. Commissioning and operation of New Airport at Chek Lap Kok

22. Restaurant licensing system

23. Issues pertaining to imported pharmaceutical products

1999 / 2000

24. Registration and inspection of kindergartens

25. Provision and management of private medical and dental clinic services in public housing estates

26. Regulatory mechanism for the import / export, storage and transportation of used motor vehicles / cycles and related spare parts

Annex 6

List of Direct Investigations Completed

2000 / 2001

27. Regulatory mechanism for local travel agents for inbound tours

28. Selected issues concerning the provision of retraining courses by the Employees Retraining Board

29. Clearance of Provisional Urban Council tenants and licence holders affected by the Land Development Corporation's development projects

30. Selected issues concerning the management of government crematoria

31. Procedures for immigration control of persons who present themselves, are found or returned to immigration check points without proof of identity

2001 / 2002

32. Procedures for handling travellers suspected of using false or otherwise suspect travel documents

33. Management of construction projects by the Housing Authority and the Housing Department

34. Administration of public examinations

35. Mechanism for enforcing the prohibition of smoking in no smoking areas and public transport carriers

2002 / 2003

36. The Education Department's contingency and relief measures for the secondary school places allocation exercise 2001

37. Funding of sports programmes by the Hong Kong Sports Development Board

38. Administration of vehicle registration marks auctions

39. Mechanism for handling missing patients in hospitals of the Hospital Authority

40. Monitoring of charitable fund-raising activities

41. Role of the Home Affairs Department in facilitating the formation of owners' corporations

Annex 6

List of Direct Investigations Completed

2003 / 2004

42. Enforcement of the Education Ordinance on universal basic education

43. Operation of the Integrated Call Centre

44. Assistance provided by the Home Affairs Department to owners and owners' corporations in managing and maintaining their buildings

45. Prevention of abuse of the Comprehensive Social Security Assistance Scheme

46. Handling of examination scripts under marking

Summaries of Direct Investigations

EDUCATION AND MANPOWER BUREAU (EMB)

Enforcement of Education Ordinance on Universal Basic Education

Background

In the wake of reports of children of school age (six to 15) being kept from school and local children of ethnic minorities not getting school places, The Ombudsman conducted a direct investigation into the mechanism of enforcing compulsory education.

Current Enforcement Mechanism

2. EMB requires heads of schools to report dropout cases urgently through the "Early Notification System" to its Student Guidance Section (SGS). Every means available to EMB with the involvement of counsellors, educational psychologists, family workers and school social workers will be deployed to persuade dropouts to resume school.

3. Difficult cases which remain unresolved after six months are referred to EMB's Internal Review Board (Review Board) for follow-up actions, e.g. issuing warning letters and statutory attendance orders.

4. For pre-school children, parents will be reminded through publicity programmes to send their children to school.

5. EMB has no record of any child of ethnic minorities not being placed in school. Those who claimed to have encountered difficulties in securing places may have been trying to transfer to their preferred schools. EMB has asked schools to refer excess applications received to them for follow-up action. EMB will strengthen collaboration with non-governmental organisations serving ethnic minorities.

Observations and Opinions

6. This Office accepts that absenteeism of pre-school children is insignificant according to enrolment statistics. Reminding parents of their legal obligation to send their children to school through publicity programmes is appropriate and adequate.

7. We welcome EMB's assurance that there are sufficient school places for children of ethnic minorities. However, more publicity is needed for promoting awareness of Government's offer of assistance in school placement.

8. We note EMB's reservations over the issue of warnings and orders in dropout cases. However, the legislation has been introduced to safeguard children's right to education and the law should be observed. Undue lenience puts such right at risk and the law in disrepute.

9. We note that schools did not always comply with EMB's guidelines in notifying SGS of dropout cases.

10. Counselling is at times clearly unlikely to be fruitful. Requiring SGS to continue with counselling for six months before referring the case to the Review Board simply delays enforcement. With EMB's apparent hesitation (or, in its view, cautiousness) towards stronger action, some cases have dragged on for years.

11. The Review Board takes months to issue a warning letter and is even more reluctant to issue attendance orders. In the four cases the Office has studied in the course of the investigation, the Department of Justice commented on two occasions that the time lapse between dropout and the recourse to legal action had been too long. Cautious planning is no excuse for dilatoriness.

12. It is common belief that compulsory education was prompted by exploitation of child labour. This problem no longer exists. These days, our community is more affluent, labour legislation more comprehensive and Government assistance to the needy and vulnerable much enhanced. We see the time as appropriate for Government to review the need for enforcing schooling by law and to go for an administrative policy of "free universal basic education".

Recommendations

13. The Ombudsman has made the following recommendations to the Permanent Secretary for Education and Manpower –

General

(a) Regularly review and repeat publicity programmes to promote awareness of the law on compulsory education and the benefits of schooling.

Children of ethnic minorities

(b) Inform ethnic minorities, through such channels as schools, relevant Non-Government Organisations (NGOs) and the media, of Government's offer of assistance in school placement.

(c) Strengthen collaboration with relevant NGOs to better understand the needs of the ethnic minorities in regard to education.

Dropouts

General

(d) Work out, as a general guide, a reasonable and realistic timeframe and flow chart for bringing students back to school –

i) by counselling; or
ii) by firmer legal measures.

Guidelines to schools

(e) Review the guidelines to schools for reporting dropouts to cut delay in follow-up action and institute early warning for non-compliance.

(f) Issue reminder to heads of schools to reiterate the importance of complying with the requirements of the "Early Notification System" in the interests of students concerned.

Counselling

(g) Where counselling is unlikely to work, refer to the Review Board without delay.

Warning and legal action

(h) Require the Review Board –

i) to be firm and decisive in issuing warning letters early; and
ii) on non-compliance with warning letters, to decide on timely service of attendance orders.

Statutory school attendance

(i) Review the need for enforcing compulsory education by law.

Comments from EMB

14. Recommendations (a) to (c) are being implemented. In connection with recommendations (d) to (h), EMB will re-engineer the existing procedures and practices to cut short the time taken for intervention and provision of support services for non-attendance cases.

15. On recommendation (i), having reaffirmed Government's position on the need to enforce compulsory education by law, EMB will not review the policy. The Ombudsman respects EMB's professional judgement and prerogative on how universal basic education should be enforced.

A Further Note

16. On Government's policy for integrating children of ethnic minorities into the local community, we are aware of considerable concern amongst these minorities over the children's difficulties in taking up the regular curriculum. There are some suggestions –

(a) that Chinese be taught as a second language; and

(b) that their own language be also taught.

In this light, there is a case for Government to review the curriculum for these children. We recognise that this is a matter of policy whether and how improvement should be made. Our observations here aim to generate discussion.

May 2003

Summaries of Direct Investigations

EFFICIENCY UNIT (EU)

Operation of Integrated Call Centre (ICC)

Background

ICC, managed by EU of the Chief Secretary for Administration's Office of the Government Secretariat, was set up to provide a one-stop telephone service for enquiries and complaints in July 2001. EU envisaged that ICC would benefit all parties – more convenience and better service to the public, operational and efficiency gains for client departments with increased productivity, improved management and a positive image for Government. We have been receiving complaints about ICC's handling of public enquiries and complaints since it began operation. This triggered our investigation into the quality of service and accuracy of information provided by ICC.

Operation and Concept of ICC

2. Over 60 hotlines formerly operated by 12 Government departments have been taken up by ICC progressively since July 2001. In November 2001, parallel to the 60 departmental hotlines, EU introduced the Citizen's Easy Link single-number hotline 1823, also catering for public enquiries and complaints.

3. The ICC concept involves use of both telephony and information technology. Through an Interactive Voice Recording System, incoming calls are directed to operators on the basis of language or specialty. Operators use a computerised system to look up information in a knowledge base to provide an immediate response to callers or to send messages to the appropriate department for follow-up action. The computer system also logs calls for monitoring and statistical analysis.

4. Under Service Level Agreements between EU and client departments, ICC is expected to meet certain performance measures such as an abandoned call rate of less than 10 percent, answering calls within 12 seconds and a first call resolution rate of 90 percent for enquiries.

5. To compare ICC with other operators, we visited call centres run by non-participating departments and by a private company.

Observations and Opinions

6. Our investigation confirmed that ICC had improved Government's public enquiry service and identified the following areas for further improvement –

Maintenance of the knowledge base

(a) Rigidity of data-entry templates delayed the updating of information, which resulted in misassignment or misdirection of calls.

Misassignment of cases, staff training and work allocation

(b) Call agents have to serve many departments and functions. This has led to errors of misassignment and misdirection of cases. ICC's performance level had dropped as the number of client departments increased.

Call centre identity, accountability and personal data privacy

(c) ICC answers calls in the name of client departments. This raises concern about transparency, accountability and personal data privacy. Some departments felt that their reputation might be affected by proxy if ICC mishandled their calls.

One-stop service

(d) Government intends to move to a single-number hotline for all enquiries and complaints. This has been partly achieved by integrating over 60 departmental hotlines into ICC but there is as yet no timetable for full migration.

Management culture and working relationship

(e) ICC's organisational culture is more task- than people-oriented. Some client departments considered that ICC dominated, rather than accommodated, their requirements. There was a case for review and realignment for more cordial and cooperative partnership between ICC and client departments.

Recommendations

7. The Ombudsman made 18 recommendations to EU –

Maintenance of knowledge base

(a) Greater concern should be given to the different requirements of individual client departments. The knowledge base should be updated promptly and kept current.

(b) Consideration should be given to linking the knowledge base to Government's Geographical Information System datamap.

Misassignment of cases to departmental staff

(c) Misdirection / misassignment errors should be systematically monitored and corrective measures incorporated into the knowledge base.

(d) ICC should monitor the progress of unresolved enquiries / complaints and remind client departments accordingly.

(e) EU should carry out annual reviews of the knowledge base at a more global level to update departmental policies and procedures not covered in day-to-day updating.

Staff training and work allocation

(f) There should be a team responsible for interdepartmental coordination. Teams should be set up to specialise in dealing with enquiries or complaints on particular subjects or departments.

(g) Client departments should brief ICC staff from time to time to enhance knowledge of their operations.

Call centre identity

(h) ICC should answer calls in its own name. Reference to hotline numbers in departmental telephone directories should indicate that calls are handled by ICC.

(i) There should be publicity to promote awareness of ICC and its relationship with client departments.

Accountability

(j) ICC should shed its anonymity, particularly if it is to continue to answer departmental hotlines.

(k) ICC should provide client departments with regular statistics on complaints received on its service.

Personal data privacy

(l) Callers' consent should be obtained when ICC passes their personal data to client departments or third parties.

One-stop service

(m) To make for a one-stop service in practice and in name, the long-term solution is to migrate to a single hotline number, say, the Citizen's Easy Link 1823.

(n) There should be an operator to screen and forward calls to the appropriate ICC specialist team.

Departmental call centres

(o) Departments should be given the option of having their own call centres or joining the ICC scheme.

Management culture

(p) A review should be undertaken to examine and address management-staff issues.

Working relationships

(q) EU and ICC should strengthen mutual understanding and cooperation with client departments.

(r) EU should determine the appropriate service role for ICC, review ICC's management culture and arrange training for management staff.

8. EU accepted most of our recommendations but preferred to continue its practice of answering departmental hotlines in the name of the department until all its clients had agreed to migrate to a single hotline number. It also considered that setting up sepcialised teams would defeat the concept of one-stop service and downgrade the performance of ICC. We consider that an open government should be accountable and transparent. We believe that some degree of specialisation will minimize misdirection or misassignment of cases. We, therefore, maintain our recommendations and will continue to liaise with EU on their implementation.

July 2003

Summaries of Direct Investigations

HOME AFFAIRS DEPARTMENT (HAD)

Assistance provided by HAD to Owners and Owners' Corporations in Managing and Maintaining their Buildings

Background

In March 2003, this Office completed a direct investigation into how HAD facilitated the formation of owners' corporations (OCs). While investigating, this Office noted considerable community concern over the adequacy and effectiveness of the assistance provided by HAD to owners and OCs in managing and maintaining their buildings. The Ombudsman, therefore, decided to conduct another direct investigation focusing on that issue.

Government Policy and Strategy

2. The responsibility for managing and maintaining private property rests with the owners. The role of Government is to encourage them to form OCs and to give advice and assistance. In April 2001, Government published a comprehensive implementation strategy for building safety and timely maintenance, which included measures for encouraging and improving responsible building management. In May 2001, the Secretary for Home Affairs (SHA) set out Government's three-pronged approach to strengthen support to owners and OCs –

(a) to provide a legal framework conducive to the formation and operation of OCs;

(b) to provide more professional advice, more comprehensive and accessible services to owners and OCs; and

(c) to provide training for OC members.

For this, Government allocated additional funds of $43.9 million a year to HAD, including that for 90 posts.

Organisational Set-up and Staff Deployment

3. At the headquarters level, HAD's Building Management Division planned and coordinated building management services; and provided support and training to frontline staff. At the regional level, four Building Management Resource Centres (BMRCs) provided information, answered enquiries, offered advice and organised training courses, workshops

and exhibitions. The Centres also arranged appointments for owners and OC members to seek free expert advice from volunteer professional bodies. At the district level, the District Building Management Liaison Team (DBMLT) in each District Office (DO) helped owners form OCs, provided proactive assistance to owners and OCs of problematic buildings, offered advice at meetings when invited, organised publicity and training programmes, handled complaints and mediated in disputes.

4. HAD's building management services used to be provided by its own Liaison Grade staff, Housing Grade staff seconded from the Housing Department, together with a Senior Building Surveyor (SBS) and a Senior Government Counsel (SGC). DBMLTs were assisted by Temporary Community Organisers (TCOs) performing more labour-intensive duties such as household visits, information dissemination and collection.

5. In March 2003, HAD decided to delete all 78 Housing Grade posts by phases, from 2002 / 03 to 2005 / 06. By October 2003, HAD had deleted 37 posts including the SBS and transferred the SGC post to the Department of Justice. The departure of such staff inevitably diluted the expertise in HAD and affected the quality of its building management services.

Observations and Conclusions

6. From the investigation, this Office had the following main observations and conclusions –

(a) Over the past 30 years, Government had devoted much efforts to promote good building management. In recent years, Government had amended the Building Management Ordinance (BMO) and drawn up proactive strategies and positive policies to further assist owners and OCs. Government's intentions and efforts were commendable.

(b) HAD had also put in commendable efforts to promote and support good building management and to organise more training for owners and OCs. However, the Department still fell short in providing advice and proactive assistance to owners and OCs.

(c) The deletion of all Housing Grade and professional posts for building management services had frustrated SHA's policy objectives declared and resourced in 2001, which was tantamount to turning the clock back to the pre-2000 era.

(d) While HAD had to achieve efficiency savings under Government's economy drive, it must not allow services to slip or deteriorate. To this end, HAD must re-examine its role, re-adjust its priorities and re-deploy its resources.

(e) While HAD should continue to enlist the voluntary services of professional bodies and professionals in private practice, the Department must build up its own building management expertise for service enhancement and legislation reviews.

(f) Despite HAD's continued publicity and education, some owners and OCs were still under the misconception that Government had a duty to solve all their management problems. That had created unnecessary difficulties for and undue burden on HAD.

(g) TCOs in DBMLTs were not trained or meant to advise owners and OCs, but many owners / OCs thought they were.

(h) HAD and other Government departments had produced a wide range of materials relating to building management. Public access to such materials should be enhanced.

(i) HAD had extended the opening hours of BMRC / Kowloon and upgraded the telephone redirection and recording services which operated after opening hours, which was a welcome move.

(j) HAD had, since September 2002, arranged for professional bodies to provide free mediation service at BMRCs on a pilot basis. However, only four mediation sessions had been conducted since.

(k) HAD had in 1985 set up Building Management Coordination Committees (BMCCs) to identify problematic buildings and coordinate inter-departmental efforts in resolving their management and maintenance problems. The scheme, however, had problems of interfacing with the Buildings Department's Coordinated Maintenance of Buildings Scheme (CMBS) established in 2000.

(l) Government policies on building management were found to be fragmented, and responsibilities scattered among a number of bureaux and departments. The situation was complicated by Team Clean asking the Housing, Planning and Lands Bureau, instead of the Home Affairs Bureau, to formulate policy on mandatory formation of OCs and appointment of property management companies.

Recommendations

7. The Ombudsman made the following recommendations to HAD and the Administration –

HAD

Staff deployment

(a) To critically review its staff complement, in particular its deletion of all Housing Grade and professional posts for building management services.

(b) To clarify and publicise the roles of its Liaison Officers and TCOs for realistic perception and reasonable expectations by owners and OCs.

Means of service delivery

(c) To upload building management publications onto or provide hyperlink access through the Department's building management website.

(d) To enhance the information on the website and allow alternative access by themes.

(e) To produce, in collaboration with other departments and professional bodies, more checklists on handling of building management problems for the reference of owners and OCs.

(f) To review the needs of BMRC users on a regular basis and extend or revise the opening hours of BMRCs for client convenience.

(g) To publicise more widely the pilot mediation scheme provided at BMRCs.

(h) To step up training on the legal aspects of BMO for OC members.

(i) To critically review and resolve the interface problems between the HAD's BMCCs and the CMBS administered by the Buildings Department.

Support and control

(j) To expedite the production of staff reference materials and to expand the "Frequently Asked Questions on BMO".

(k) To refine the staff training and development plan.

(l) To consider sponsoring appropriate staff to acquire formal qualifications in housing management.

(m) To devise standard classification of building management themes and sub-themes for consistent reporting of management information.

(n) To consider setting up in DOs a network of Client Liaison Groups to tap user feedback and suggestions.

The Administration

(o) To consider designating one single bureau in Government to coordinate the formulation of policies on private building management.

Final Remarks

8. Overall, HAD accepted all our recommendations.

November 2003

HONG KONG EXAMINATIONS AND ASSESSMENT AUTHORITY (HKEAA)

Handling of Examination Scripts under Marking

Background

There had been media reports on recurrent loss of examination scripts in the course of marking. Such losses could affect the future of the young people concerned and undermine public confidence in our examinations system. We examined HKEAA's measures for the safe custody of examination scripts and its remedial action in case of loss.

Lost Scripts and Remedial Measures

2. About two million scripts had to be marked every year. In the last five years, 77 scripts were lost. HKEAA's view was that with the collection and transfer of such a large volume of scripts, loss of some was inevitable. In the event of loss, HKEAA would not inform the candidate but would award an assessed mark. HKEAA did not keep any proper report on its investigation process and findings.

3. Markers were not given any specific guidelines or cautionary advice on the safe custody of scripts. Except for those who had admitted negligence, subsequent appointment of markers who had lost scripts would not be affected.

Observations and Opinions

4. We considered the loss of even one script to be one too many. Some might see this as an indictment on HKEAA's dereliction of duty to the candidates and a breach of the public faith in its administration of the examinations system. HKEAA's lack of transparency (i.e. not informing the affected candidates) was out of step with present-day accountable governance. The total absence of proper investigation to ascertain responsibility among those concerned and a penalty system commensurate with the level of responsibility was incredible.

5. It was not satisfactory that HKEAA did not have guidelines to markers on prevention of loss or on due caution. As markers were remunerated for marking, they should not expect to be exonerated because HKEAA had not issued reminders or guidelines.

6. Candidates affected had a right to be informed of the loss of their scripts and to decide on remedy in view of the impact of the loss on their future.

Recent Development

7. At the end of January 2004, HKEAA announced a new arrangement whereby candidates would be given a choice on the day the examination results were announced : accepting the assessed mark or receiving a refund of fees. This was Hobson's choice, not good enough and too little too late.

Recommendations

8. The Ombudsman made the following recommendations to HKEAA –

General

(a) HKEAA and markers to adopt a more responsible and transparent attitude towards loss of scripts.

Follow-up action on loss

Investigation

(b) Maintain a file for each case to record the investigation process, deliberations and any other data.

(c) Properly investigate each and every report of loss, analyse causes for the loss and consider remedial measures.

(d) Arrange for all cases to be discussed at a proper forum of the Authority convened for the purpose of apportioning responsibility, awarding penalties, analysing causes for the loss and determining precautionary measures.

Penalty system

(e) Devise a system of deterrent and penalty for loss of scripts.

Prevention of loss

(f) Include in the instruction guide to markers a firm reminder of the importance of safe custody for scripts and appropriate advice against risk of loss in transit and marking.

(g) Circulate extracts of reports on the investigation of loss among markers to promote and enhance their awareness.

(h) Appeal for school principals' cooperation in providing markers with safe storage for scripts, e.g. in teachers' offices.

(i) Review the invigilation process, especially the collection of scripts from candidates on departure from the examination centre. Strengthen the guidelines for centre supervisors and invigilators.

Marker ethics

(j) Impress upon markers their duty to their classes and candidates.

Remedial measures

(k) Notify candidates affected soonest possible, on availability of assessed score.

(l) Consider offering candidates the option of re-sitting an examination or accepting the assessed marks. On this, it might be useful for HKEAA to consult such interest groups as parent-teacher associations.

(m) Set up proper mechanism for appeal against remedial measures taken.

Comments from HKEAA

9. HKEAA recognised the significance of lost scripts and the need for remedial measures to be fair. However, it was concerned over the technical difficulties and cost-effectiveness of re-examination.

Final Remarks

10. The Ombudsman believed that with HKEAA's established procedures and experience, the technical difficulties associated with re-examination could, and should, be overcome. In considering the cost-effectiveness angle, the interests and rights of the candidates and the public interest in maintaining a fair and credible public examinations and assessment system should not be ignored.

March 2004

SOCIAL WELFARE DEPARTMENT (SWD)

Prevention of Abuse of Comprehensive Social Security Assistance

Background

The Comprehensive Social Security Assistance (CSSA) scheme provides a safety net for the needy and vulnerable. The community supports assistance for the less fortunate but is concerned over possible abuse of the scheme. SWD has the responsibility to establish the mechanism to deter abuse and to investigate suspected cases.

2. Against this background, The Ombudsman decided to conduct a direct investigation : any system with scope for abuse and malpractice could constitute maladministration.

3. CSSA aims to provide recipients with all the basic necessities and their special needs through the disbursement of standard rates, supplements and various special grants. To be eligible, applicants have to satisfy both a residence requirement and a means test. They have to attest to the accuracy of the information provided in support of their eligibility and to report subsequent changes in financial condition and family status. The Special Investigation Section (SIS) of SWD is responsible for investigating cases of suspected fraud.

4. On SWD encouragement and arrangement, some recipients participate in the Department's Active Employment Assistance (AEA) and Community Work (CW) programmes.

5. Though cases of abuse are relatively few compared to the total number of CSSA recipients, a credible system for investigating attempts to defraud and a demonstrable determination to punish defrauders help to uphold the integrity of the scheme. This would assure the community that the scheme benefits those genuinely in need and that these persons should not be tarnished or stigmatised by the misconduct of those who abuse the CSSA scheme.

Observations and Opinions

6. The Ombudsman made the following observations and opinions –

Grants on offer

(a) The adjustment of standard rates to reflect deflation had lagged behind the fall in wage level of the lower-income group.

(b) Front-line officers did not have a guide on the rental levels in different districts for assessing the reasonableness of claims for rent allowance.

(c) The working guidelines on the processing of discretionary special grants were too vague, resulting in disparity and inconsistency of treatment.

(d) For single parents, non-monetary support would be more meaningful than a monetary supplement.

Eligibility

(e) There was no limit on the number of dependant children in a recipient family.

(f) The new residence requirement (from one to seven years with effect from 1 January 2004) should be widely publicised to help avoid unrealistic expectations from one-way permit applicants. Discretion to relax this new requirement should be exercised sparingly.

(g) SWD's tolerance of abuse could unwittingly condone fraudulent exploitation of the CSSA scheme.

(h) There might be scope to raise the level of disregarded income or to allow CSSA recipients to accumulate income, provided the asset limit was not exceeded.

(i) The basis to allow applicants to keep the current level of assets was obscure. The non-inclusion of self-occupied property as assets in most cases was a possible loophole for abuse. Non-disclosure of property outside Hong Kong was another area of abuse for being difficult to detect.

(j) Dissemination of information gleaned from SIS investigations could alert staff to common features of potential abuse and usual tactics for concealing information.

(k) Case studies revealed serious delays in the investigation process.

(l) SWD did not readily resort to criminal sanction against fraud and deception.

Recommendations

7. The Ombudsman made the following recommendations –

General

(a) Design publicity programmes targeting specific groups –

i) to promote a positive perception of the scheme;

ii) to remind CSSA applicants and recipients of their obligation to provide full and truthful information; and

iii) to appeal for information on suspected abuse.

Grants on offer

(b) To review regularly all the different components of the grants so that they remained proportional to the household expenditure of the relevant income sector.

(c) To subsume the standard special grants into the standard grant.

(d) To draw up indices on rental levels in districts to assist case officers to determine the rent allowance and detect unreasonable claims.

(e) To set up a committee to review discretionary special grants approved, standardise the more common or frequent applications and draw up guidelines for approving officers.

(f) To review and standardise follow-up action on repeated claims for discretionary special grants, take a firmer stand where recipients should have assumed certain personal responsibility for his predicament.

(g) To consider alternative support in lieu of the single parent supplement.

Eligibility

(h) To review the limit on the number of eligible family members with a view to lowering the amount of standard rate for additional family members.

(i) To publicise the new seven-year residence requirement to intending immigrants.

(j) To consider the practical implications of the seven-year residence requirement.

(k) To keep in view the provision of family services to new arrivals.

(l) To draw up detailed guidelines on the waiving of the seven-year residence requirement.

(m) To review the level of disregarded income and the arrangements for recipients to accumulate income towards the prescribed asset limit.

(n) To consider lowering the prescribed asset limits for initial entry into the CSSA scheme.

(o) To review the self-occupied property rule and consider limiting the value of such property to be commensurate with the standard of living of most recipients.

(p) To review the procedures and mechanism for monitoring disclosure of property ownership and transfer of assets outside Hong Kong.

Support for self-reliance

(q) To evaluate regularly the effectiveness of the AEA programme.

(r) To strengthen liaison with Government departments and non-governmental organisations and explore more openings for community services.

(s) To review the participation of able-bodied recipients and single parents in the CW programme.

(t) To continue to explore ways to help victims of recent redundancies, including partnering closely with Labour Department on employment placement.

Mechanism for preventing abuse

(u) To provide more training on fraud detection.

(v) To circulate to frontline staff regular reports on cases handled by SIS.

(w) To ensure CSSA applicants were made aware of their obligation to provide accurate and full facts.

(x) To issue guidelines on valuing properties and consider the imposition of penalty where disclosure of ownership was not voluntary.

(y) To strengthen the review procedures on entitlement and continuing eligibility.

(z) To remind staff to refer suspected fraud to SIS without delay.

(aa) To prescribe a performance pledge for complaint handling by SIS and devise a mechanism to check compliance.

(bb) To take a firm stand on attempts to defraud : step up prosecution action, review the need to impose administrative sanctions, devise a high-level mechanism to review action taken.

December 2003

Summaries of Direct Investigation Assessments

GOVERNMENT LAND TRANSPORT AGENCY (GLTA)

Case No. OMB/DI/106

Arrangement for Claims relating to Traffic Accidents involving Government Vehicles

Introduction

Unlike private vehicle owners, Government is exempted from insurance against third party risks under the Motor Vehicles Insurance (Third Party Risks) Ordinance. As it has the financial capability to cover its vehicles against such risks, Government is the insurer for its fleet.

2. In October 2002, there was widespread media coverage on the Court's rejection of a compensation claim by a victim of a traffic accident involving a Government vehicle. Government disputed liability on grounds that the use of the vehicle at the time of the accident was not authorised. Although Government offered an *ex gratia* payment to the victim, there was considerable public concern over the equity and adequacy of protection to victims in accidents involving Government vehicles.

Present Arrangements

3. Where liability is indisputable, the Department of Justice, acting on behalf of the Government, will try to settle the claim out-of-court.

4. For accidents which involve unauthorised use of its vehicles, Government has no legal liability. Victims have no recourse to compensation except for a discretionary *ex gratia* payment from Government.

Subsequent Developments

Insurer Concerned Principle

5. All motor insurers abide by the "Insurer Concerned Principle" whereby they will shoulder compensation claims from traffic accidents even when there has been a breach of insurance policy conditions such as unauthorised use of the vehicle at the time of an accident. Following a review in October 2002, Government has introduced a similar principle to provide victims with comparable protection.

Other Aspects

6. Government has re-affirmed the cost-effectiveness of the self-insurance. Guidelines on the processing of claims, the proper management and usage of Government vehicles have also been issued to departments.

Observations and Opinions

7. Government has responded promptly and positively to community concern over the incident and to our inquiry by reviewing the relevant policy and working arrangements. Both GLTA and its policy bureau are committed to handling future claims equitably.

Conclusion

8. Given these developments, The Ombudsman considers the conduct of a direct investigation under section 7(1)(a)(ii) of The Ombudsman Ordinance not warranted.

HIGHWAYS DEPARTMENT (Hy D)

Case No. OMB/DI/108

Monitoring the Operation of Road Works Vehicles

Background

Traffic accidents involving road works vehicles installed with multi sequence warning sign (MSWS or commonly known as “arrow lights”) were widely and frequently reported in recent years. MSWS vehicles are regarded as a safer means to alert road users of possible hazard and to prevent them from traffic accident, but the number of traffic accidents involving MSWS vehicles increased on the contrary. This raises public concern over the adequacy of safety measures for monitoring the operation of MSWS vehicles.

Mechanism Monitoring Road Works and Operation of MSWS Vehicles

2. Hy D is responsible for planning, design, construction and maintenance of the public road system. It contracts out road works and plays a supervisory role in monitoring the performance of the contractor.

3. Hy D regulates and monitors contractors through road works contracts. Contractors are required to comply with the laws of Hong Kong and the Code of Practice for the Lighting, Signing and Guarding of Road Works (the Code) to ensure traffic safety. The Code sets out a standard of good practice for the legal requirements to be met. Compliance with the Code is a condition or specification of a road work contract.

4. The Road Traffic Ordinance (Cap. 374) governs road traffic matters and requires a contractor to obtain an Excavation Permit or Expressway Works Permit from the Director of Highways before carrying out any road works. The operation of MSWS vehicles is further governed by the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A), Road Traffic (Traffic Control) Regulations (Cap. 374G) and Road Traffic (Expressway) Regulations (Cap. 374Q).

5. To ensure road safety, satisfactory performance of contractors and compliance with the laws and the Code, different ranks of Hy D staff check road works frequently. Contractors with substandard performance records will be penalised.

6. Meanwhile, the Police, Transport Department and Labour Department also play an indirect role in monitoring the safety of road works and operation of MSWS vehicles. In case of violation of the laws, the contractors will be prosecuted by the relevant authorities.

Observations and Opinions

7. The Police investigation confirms that speeding, drunk driving and failure to pay due care and attention are the major causes of MSWS vehicle related traffic accidents. None of the cases involved the contractors or the drivers of MSWS vehicles.

8. Hy D is considering new measures to enhance road works safety by –

(a) installing truck mounted attenuator at the back of MSWS vehicles to minimise casualty in case of collision;

(b) installing variable message sign to alert and prompt on-coming drivers to steer clear of such vehicles;

(c) offering additional training to the drivers of MSWS vehicles to enhance their knowledge and skills on safe manoeuvring of the vehicle;

(d) launching publicity to draw road users' attention to the appropriate action to be taken on spotting warning signals or traffic signs of road works; and

(e) reviewing the relevant laws and the Code periodically.

9. The Ombudsman considers that a close monitoring mechanism is already in existence, though its effectiveness depends much on the self-discipline of road users. Against this background, full direct investigation is not warranted.

TELEVISION AND ENTERTAINMENT LICENSING AUTHORITY (TELA)

Case No. OMB/DI/105

Mechanism for Handling Complaints on Television Advertisements

In 2002, a television advertisement attracted over 700 complaints within one month. There was public concern over how TELA handled these complaints.

2. TELA was responsible for checking television advertisements for compliance with The Generic Code of Practice on Television Advertising Standard. In view of the number of channels and volume of advertisements, TELA could only act on complaints. If there was *prima facie* evidence of breach of regulations, the complaint would be referred to the Broadcasting Authority and its Complaints Committee for deliberation as to what, if any, sanction should be imposed.

3. While investigation was proceeding, the advertisement concerned would continue to be broadcast. As this would fuel public dissatisfaction, TELA introduced a new mechanism in June 2003 to expedite investigation into advertisements the continued broadcast of which would impact adversely on the community. The public, concerned to see the continuing broadcast of any advertisement they consider undesirable or unacceptable, would demand immediate stoppage of such broadcast.

4. We agreed with TELA that it had a duty to balance public sentiments against the interests of the licensee, the advertising agent and the advertiser. To uphold the principle of natural justice, proper investigation should be conducted and the parties concerned allowed to make representations. Until a ruling was made, there was no basis to stop the broadcast.

5. TELA had, quite properly, introduced measures to fast track the investigation process where warranted.

Summaries of Direct Investigation Assessments

TRANSPORT DEPARTMENT (TD)

Case No. OMB/DI/109

Monitoring of Compliance with Licensing Conditions for Operation of Non-franchised Buses (Residents' Service)

The operation of non-franchised buses (residents' service), commonly known as "estate buses", was regulated by the conditions of their licences.

2. After a new estate bus route has been approved, TD would conduct surveys to check for compliance with the licensing conditions. For existing services, in addition to complaint-driven inspections, TD would initiate surprise checks and annual comprehensive surveys.

3. Where non-compliance is detected, TD would take enforcement action. Depending on the severity of the case, such action would include warning, demand for rectification, inquiry under the Road Traffic Ordinance and prosecution.

4. To regulate the boarding and alighting of passengers, TD has erected bus stops and designated restricted zones in busy districts, i.e. Central, Wanchai and Tsimshatsui. Such regulatory measures would be extended to other districts, including the New Territories.

5. Measures taken by TD have been effective in monitoring the operation of licensed estate buses. In addition, enforcement against non-compliance has been stepped up since 2002.

Summaries of Selected Cases Concluded by Preliminary Inquiries

Cases Concluded under Internal Complaint Handling Programme

HONG KONG HOUSING AUTHORITY (HKHA)

Case No. OMB 2003/1907

HKHA – refund of rental – delay in refund of excess rental paid by autopay

The complainant used to be the tenant of a public housing unit. He subsequently purchased the unit through the Tenants Purchase Scheme, but Housing Department (HD), the executive arm of HKHA, continued to charge him rental by debiting his bank account through autopay. He went twice to the property services office (PSO) of the estate to request for refund of the excess rental paid, but there was no response for over a year.

2. HKHA explained that the management of the estate and the PSO had been outsourced to a property management agent. As the complainant had not notified his bank or HD to stop the autopay authorisation, the bank continued to pay his rental to HD. Although he had gone twice to the PSO to apply for refund, the staff had failed to forward his application to HD for follow-up and so caused the delay. Upon receipt of the complaint, HD immediately arranged the refund and sent a written apology for its negligence.

3. To enhance the quality of service and to avoid recurrence, HD had instructed PSO staff to handle tenants' applications and enquiries more carefully.

REGISTRATION AND ELECTORAL OFFICE (REO)

Case No. OMB 2003/4242

REO – application for change of personal particulars – unreasonably rejecting application for change of residential address

The complainant had notified REO in early September 2003 of change of her residential address and applied for a corresponding change of her constituency for the District Council elections in November 2003. Not receiving immediate response from REO, she raised an enquiry and was told that her application could not be accepted because the address in her

application did not match with the REO records. As a result, the complainant could not vote in her new constituency.

2. REO clarified that according to the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulations, applications for change of voter's personal particulars submitted after 29 August 2003 would be reflected only in the 2004 Register of Electors. As the complainant applied for change of residential address on 3 October 2003, REO could not process in time for the complainant to cast her vote in her new constituency in the 2003 District Council elections.

3. Although The Ombudsman accepted REO's explanation, she noted that it had taken REO almost two months to finish processing the application. Meanwhile, no interim reply (apart from the initial acknowledgement) had been issued to the complainant. In response to The Ombudsman's suggestion, REO undertook to revise its procedures to keep applicants informed of the progress of their applications by interim replies where necessary.

TRANSPORT DEPARTMENT (TD)

Case No. OMB 2003/3211

TD – minibus stop – delay in moving a minibus stop back to its original location

The complainant alleged that due to improvement works at an MTR station, a nearby minibus stop had to be temporarily relocated to somewhere close to her residence. The original plan to move it back by May 2003 was not carried out and the minibus stop remained there several months after completion of the works. As a result, she was affected by noise and exhaust for a long time.

2. TD explained that to allow for the construction of a footbridge system and improvement works at the MTR station, the original site of the minibus stop had to be temporarily closed and the traffic diverted. The minibus stop was temporarily moved near the complainant's residence to ease traffic congestion. Meanwhile, the Department had asked the public light bus associations and the minibus service contractors to take steps to reduce the nuisance from noise and exhaust to nearby residents. The road works and ancillary drainage works took much longer to finish. Upon completion of the works in October 2003, TD immediately arranged for the minibus stop to be relocated. The noise and air pollution problems were hence resolved.

3. TD apologised for the inconvenience caused by the temporary relocation of the minibus stop. It undertook to monitor closely the progress of similar works in future to minimise their impact on the public.

Cases Concluded under Rendering Assistance / Clarification

BUILDINGS DEPARTMENT (BD)

Case No. OMB 2003/0097

BD – removal of illegal structures – (a) failing to give prior notice before posting a removal order, thus causing nuisance to the complainant; and (b) failing to respond to the complainant's repeated enquiries

The complainant alleged that BD did not give him prior notice before posting a removal order at his unit, thus causing him nuisance. BD also delayed handling the case and failed to reply to his enquiries.

Complaint (a)

2. In 2001 and 2002, BD launched a large-scale clearance exercise on illegal structures. Some 3,000 buildings were identified as target and the complainant's building was one of them. The owners were required to remove the illegal structures on the external walls. As the exercise involved considerable work, the Department appointed a contract consultant to survey the illegal structures on the external walls of the complainant's building.

3. In February 2002, the consultant's staff issued advisory letters to the owners and tenants of the complainant's building, informing them that their building had been included as a target for removal of any illegal structures as soon as possible. Later, the staff inspected the building again and found illegal structures outside the complainant's unit. A removal order was, therefore, posted on the metal gate of his unit.

4. Section 35 of the Buildings Ordinance provides that a removal order may be served by registered post or by posting on a conspicuous part of the unit concerned. In addition, BD had established procedures for serving removal orders. Its staff had to post the original of the order on a conspicuous part of the unit while a copy of the same would be further served to the owner by post.

5. This Office considered the posting of the order on the complainant's metal gate appropriate as it complied with established procedures and the relevant legislation. The staff of the consultant had issued advisory letters to owners of the complainant's building in February 2002 asking them to remove any illegal structures. There was, therefore, no impropriety on the part of BD.

Complaint (b)

6. The complainant claimed that he had telephoned BD three times in December 2002 and January 2003 to enquire about the posting of the removal order, but the Department failed to respond. This Office noted that there was discrepancy in the dates of enquiries claimed by the complainant and those provided by the Department. However, it was indisputable that the complainant did telephone to enquire on 17 December 2002 and the Department did not reply until 2 January 2003.

7. This Office considered it understandable that BD could not give a prompt reply as it had to wait for information from the consultant. BD did give the complainant a detailed explanation as soon as it obtained the information. Nevertheless, it would have been better if BD had contacted the complainant earlier to explain why it could not answer promptly. Overall, this Office considered there was no impropriety in the Department's handling of the case.

CHIEF SECRETARY FOR ADMINISTRATION'S OFFICE (CS's OFFICE)

Case No. OMB 2003/0489

Administration Wing of CS's Office – public petition – failing to provide clear guidelines on handling applications to petition at Central Government Offices

The complainant alleged that when she went to petition at the Government Secretariat (GS), she was refused entry by a security guard because she had not made prior application. However, another GS staff there explained that she had been refused entry because the area for petitioning could only accommodate 15 persons and the limit had already been reached. She was dissatisfied with the inconsistent replies and considered the Administration Wing's procedures for the public, particularly those going alone, to petition at the Central Government Offices (CGO) to lack transparency, causing misunderstanding and inconvenience.

2. This Office noted that the Director of Administration had issued some Guidance Notes on 27 November 2002 on the arrangements for the public to go into the designated area outside the main entrance of the CGO Main Wing to hand in petitions to Executive Council Members. However, it applied mainly to groups seeking to hold public meetings or processions inside the CGO compound. It did not state clearly what procedures individuals should follow.

3. The Guidance Notes also mentioned special arrangements for Tuesday mornings when Executive Council is in session. Petitioners were allowed to express their opinions and hand in their petitions to Executive Council Members without prior application. However, no details were given for public compliance. This Office considered improvement to the Guidance Notes necessary and so suggested to the Administration Wing.

4. This Office was pleased that the Administration Wing undertook to amend the Guidance Notes to clarify how an individual, apart from groups, may apply for permission to petition at the CGO. They would also consider adding a clause to explain in detail the arrangements for handling petitions during Executive Council meetings on Tuesday mornings. They subsequently amended and publicised the Guidance Notes incorporating the details of these special arrangements.

CIVIL ENGINEERING DEPARTMENT (CED)

Case No. OMB 2003/0827

CED – compensation claims – impropriety in handling compensation claims for massive fish-kills

The complainant, a mariculturist, claimed that a reclamation project had caused massive fish-kills in his culture zone. However, he was not compensated as other similarly affected mariculturists. He complained against CED for handling the compensation claims inappropriately.

2. With the agreement of the Legislative Council (LegCo), an Independent Review Panel (the Panel) was commissioned to investigate whether the fish-kills had been caused, wholly or partly, by the reclamation project. Prior to the investigation, it was agreed that a Liaison Group comprising LegCo Members and representatives of the mariculturists (representatives) should be set up to assist the Panel.

3. The representatives collated data on the affected mariculturists and the amount of dead fish claimed by them. Based on the representatives' submissions, the Panel assessed the quantity of dead fish killed by reclamation which should be duly compensated. However, the complainant's losses were not included in those submissions.

4. Throughout the exercise to assess compensation claims, CED had no contact with individual mariculturists and was not involved in data collection. At the time of the massive fish-kills period, CED's on-site staff had recorded the quantity of dead fish daily from the affected mariculturists. However, there was no record of the complainant's claims.

5. This Office considered that all claims for compensation had been settled in accordance with the package and procedures determined in consultation with parties concerned. The Department had not acted inappropriately in the absence of a dead fish record.

6. As to why the Panel did not have the complainant's record, the complainant might have to check with the representatives charged with data collation. As the representatives were not under The Ombudsman's jurisdiction, this Office could not investigate further.

COMMERCE, INDUSTRY AND TECHNOLOGY BUREAU (CITB), INFORMATION TECHNOLOGY SERVICES DEPARTMENT (ITSD), HOME AFFAIRS DEPARTMENT (HAD) AND SOCIAL WELFARE DEPARTMENT (SWD)

Case Nos. OMB 2003/1547
OMB 2003/1548
OMB 2003/1549
OMB 2003/1550

CITB, ITSD, HAD and SWD – website service – failing to provide satisfactory service

The complainant alleged that when she registered at the IT Hong Kong website (the Website) as a member, she was not given a membership number. As a result, she could not take part in a draw for a free computer course. She twice left a message with the enquiry hotline, but never had a reply. Her attempt to send an e-mail to the mailbox of the Website was also unsuccessful.

2. As HAD and SWD only supplied information on their IT courses to the Website for public reference, the two departments were actually not involved in this complaint.

3. CITB formulated policies on promoting information technology. It was ITSD's responsibility to operate the Website.

4. ITSD explained that users who registered as members of the Website had to set their own login ID and password. The free computer course mentioned by the complainant was run by another organisation (the Centre), and the Website only served as a link. Users had to register at the Centre's website. The complainant had mistaken her login ID to be a membership number of the Centre. ITSD subsequently explained the case to her. It also undertook to provide more details about course enrolment on the Website.

5. The enquiry hotline for the Website was operated by a contractor, who admitted that the operator on duty had not followed up her message and returned her call. The operator had been warned and disciplined. The contractor undertook to improve the enquiry hotline service.

6. Records showed that the mailbox of the Website had never received any enquiry from the complainant. While the mailbox service had been checked and found in order, ITSD undertook to provide clearer instructions on the service.

DRAINAGE SERVICES DEPARTMENT (DSD)

Case No. OMB 2002/3648

DSD – trade effluent surcharge – failing to collect trade effluent surcharge from the complainant earlier

The complainant alleged that DSD had failed to collect trade effluent surcharge (surcharge) from him until six years later, rendering it impossible for him to recover the surcharge from his previous tenant.

2. According to the Sewage Services Ordinance, industrial and commercial consumers, including restaurants, shall pay a sewage charge and a surcharge. As the complainant did not register his account under the "restaurant" category, DSD had not been levying the surcharge on him. Nevertheless, a bill for the surcharge was issued after the Department discovering in a site inspection that the complainant's premises had been used to operate a restaurant.

3. This Office noted that the Administration had publicised widely the charges for sewage services. In this case, DSD had explained to the complainant the calculation of the surcharge in details. Moreover, as the complainant could not get in touch with his previous tenant, DSD had exercised its discretion and reduced the surcharge payable. There was, therefore, no maladministration as DSD had acted according to the law.

ENVIRONMENTAL PROTECTION DEPARTMENT (EPD), LANDS DEPARTMENT (Lands D), FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD) AND PLANNING DEPARTMENT (Plan D)

Case Nos. OMB 2003/0679
OMB 2003/0680
OMB 2003/0798
OMB 2003/0799

EPD – noise nuisance – failing to monitor and control the noise from a container depot

Lands D – land grant – failing to consider the impact on nearby residents when approving the land grant for the container depot and to monitor its operation afterwards

FEHD – environmental hygiene – failing to tackle the refuse problem in the container depot

Plan D – planning issue – failing to take into account the environmental impact of the container depot when planning the land use

The complainant alleged that excessive noise was generated by a container depot near his residence. Moreover, junk and refuse often stacked in the depot and affected environmental hygiene.

EPD

2. EPD responded that the noise from the container depot was classified as industrial / commercial noise and controlled by the Noise Control Ordinance. The Department had conducted noise measurements at different times and the total noise volume recorded each time did not exceed the statutory limit. This Office considered that EPD had taken appropriate action on the complaint.

Lands D

3. Lands D explained that the site was an old scheduled agricultural lot with no restriction on its land use. Using it as a container depot, therefore, did not contravene the lease. For this reason, we agreed that Lands D need not take any action.

FEHD

4. FEHD said that its staff had only found some junk temporarily stored in the depot awaiting collection for recycling. It did not affect environmental hygiene. It followed that FEHD could only continue to monitor the situation as there was no justification to take control action for the time being.

Plan D

5. Plan D pointed out that according to the relevant outline zoning plan, the site fell within an area zoned as "Undetermined". As the container depot had been in existence before the gazetting of the Notice of the Draft Development Permission Area Plan in 1993, it was deemed "Existing Use". The depot could, therefore, continue its operation without seeking permission from the Town Planning Board.

6. This Office considered that since the site had been used as a container depot for a long time, it could not be said that Plan D had not taken into account its environmental impact when planning the land use.

Conclusion

7. The Ombudsman concluded that there was no maladministration on the part of the four departments in the case.

Summaries of Selected Cases Concluded by Preliminary Inquiries

FIRE SERVICES DEPARTMENT (FSD) AND WATER SUPPLIES DEPARTMENT (WSD)

Case Nos. OMB 2003/0419
OMB 2003/0420

FSD – fire service facilities – failing to actively handle and follow up an application
WSD – work attitude – failing to provide consistent information and shirking responsibility

The complainant's father applied to FSD for the installation of an additional fire hydrant in his village. However, he did not receive any reply after some three months; so he wrote again to enquire. Subsequently, FSD replied that his application had been referred to WSD for consideration more than three months ago, but no reply had yet been received. The complainant was dissatisfied with WSD for the delay in replying and telephoned twice to enquire. WSD staff said that a site inspection would be conducted but gave different dates for it. One officer also stated that the inspection had been delayed because he had been away on leave. The complainant was dissatisfied that both departments had delayed handling her father's application.

2. FSD explained that the unit in charge of receiving letters was different from that responsible for handling applications. There was insufficient communication between them, and they both assumed that the other would issue an acknowledgement. This resulted in no acknowledgement being issued. Nevertheless, upon receipt of the application, FSD did send staff to inspect the site and produced a report. As the installation of additional fire hydrants had to be taken up by WSD, the proposal was referred to WSD for consideration. It was FSD's original intention to reply to the complainant's father on receipt of WSD's decision. However, it had underestimated the time required for inter-departmental efforts and failed to inform the complainant's father of the progress in time. FSD had written to the complainant to explain and apologise.

3. WSD explained that due to the heavy workload of the staff concerned, it was not possible to conduct a site inspection immediately after receiving FSD's proposal. Soon after the complainant's telephone enquiries were received, the staff concerned re-arranged their work priorities, inspected the site, assessed the costs of the works and promptly informed FSD of its decision.

4. WSD also clarified that its Officer A had told the complainant a site inspection would be conducted by a certain date. Subsequently, Officer B informed the complainant that site

inspection had been conducted before due date. The information provided by the two officers, therefore, was consistent. Officer B admitted that he had mentioned his vacation leave to the complainant. However, he had no intention of using that as an excuse for the delay. WSD apologised for the misunderstanding between its staff and the complainant.

Conclusion

5. This Office considered that there was insufficient communication between FSD and WSD. They had failed to view the case from the applicant's perspective, with each department doing things in its own way. Had FSD taken the initiative to check progress with WSD after referral of the application (or if WSD had notified FSD of its inability to inspect the site immediately) and kept the applicant informed, the applicant would have been much more satisfied.

6. The Ombudsman was pleased to note that FSD had instructed its staff to adhere strictly to the departmental general orders in handling applications, while WSD had improved its work priorities.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2003/0427

FEHD – handling of request – (a) imposing an additional lighting requirement on the complainant's swimming pool; and (b) failing to give a substantive reply to the complainant's request for exemption from such requirement

The complainant, the owners' corporation of a private housing estate, lodged a complaint against FEHD for imposing an additional lighting requirement on its swimming pool. It applied for exemption from this requirement as it would mean uncomfortable glare to residents near the pool, which was already sufficiently illuminated by underwater lighting. Furthermore, although a few interim replies had been issued in response to the complainant's enquiries, FEHD had failed to give a substantive reply to the complainant's request for exemption after almost a year since the application.

2. As the imposition of lighting requirement involved technical assessment of the level of illumination, it was not an administrative matter. This Office, therefore, dealt only with complaint (b).

Annex 9

Summaries of Selected Cases Concluded by Preliminary Inquiries

3. To establish an acceptable level of illumination with ancillary safety requirements, FEHD had conducted literature search on overseas practices, consulted the Hong Kong Life Saving Society and initiated a review of the overall regulatory control of private swimming pools. We considered FEHD to have acted to ensure public safety and appreciated its difficulties in setting a standard timeframe for providing substantive replies to applications for licence-related exemption. However, it had nevertheless caused inconvenience to the complainant.

4. This Office suggested that the Department should expedite its review on the regulatory control of private swimming pools and issue a substantive reply to the complainant. For better service to the public, it should also set specific target times for the issue of interim replies. FEHD responded positively to our suggestion and issued internal instructions on the timeframe for issuing interim replies to applications for licence-related exemptions. It had also given a substantive reply to the complainant.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2003/0919

FEHD – public facilities – giving contradictory replies on the responsibility for cleansing concrete benches at a public square

The complainant found ten concrete benches at a public square covered with dirt and stains. He telephoned FEHD and enquired whether they were responsible for cleansing the benches. FEHD staff told him that the Department was responsible only for removal of litter, but not stains, on those benches. Later, he lodged a written complaint with FEHD. The Department replied that the District Office (Environmental Hygiene) for the area had always been responsible for removing any litter on the benches and would “cleanse the benches every week”. The complainant was dissatisfied with the two contradictory replies.

2. FEHD explained that the concrete benches in question were built with a coarse surface prone to dirt and stains. Whilst the cleansing teams under the Department would remove any litter on the benches during their daily street cleaning routines in the vicinity of the square, washing the benches was not among their duties.

3. In spite of this, upon receipt of the complainant’s initial enquiry, FEHD immediately sent a team to cleanse the benches and discussed with Lands Department the responsibility for cleansing the benches. It also proposed that the Architectural Services Department should apply some smooth and easy-to-clean material on the seats as a long-term solution.

4. As for the “weekly cleansing” of the benches, FEHD was using its discretion to arrange for their cleansing in the spirit of service to the public after consultation with various departments. When the complainant first made his enquiry to FEHD, cleansing the benches was indeed not one of its duties. Nevertheless, FEHD subsequently took up the responsibility and therefore indicated in its reply that it would “cleanse the benches every week”.

5. This Office commended FEHD for being quick in response and proactive in handling the complaint. However, it had not explained fully and clearly the responsibility for cleansing the benches in its written reply to the complainant. We, therefore, suggested that the Department send an apology to the complainant on this point.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2003/1601

FEHD – staff attitude – being impolite when responding to an enquiry

The complainant had asked a man in FEHD uniform on the street how to apply for permission to hang billboards on pavement railings. The man responded that the matter was not on his duty schedule and advised him to find the answer himself. The complainant alleged that the FEHD staff was rude and that his look was intimidating.

2. This Office agreed that the subject of the complainant’s enquiry was not within the purview of that officer. It was, therefore, no surprise that he could not provide an answer. Furthermore, as the complainant had raised his question out of the blue while walking on the street, the officer’s look of surprise was only a natural reflex reaction.

3. The incident did not involve maladministration. We suggested that the complainant check with the Central Telephone Enquiry Centre of the Home Affairs Department if he had questions about the ambit of Government departments.

Annex 9

Summaries of Selected Cases Concluded by Preliminary Inquiries

GOVERNMENT LABORATORY (Govt Lab)

Case No. OMB 2003/2131

Govt Lab – DNA analysis – delay in laboratory analysis such that the complainant was unable to claim back his wife's body earlier

The complainant alleged that Govt Lab had delayed the DNA profiling of his late wife and her surviving sister (i.e. the complainant's sister-in-law) so that he could not claim back his wife's body earlier. He was dissatisfied that it had taken Govt Lab seven months to complete this test. However, when the police later proposed a similar test with his daughter, it could complete the test within three or four weeks. As there was such a big difference in the time required for completing the two tests, he considered there to be impropriety on the part of Govt Lab.

2. Our investigation revealed that, in January 2003, the police had found a burnt corpse and, after preliminary investigation, suspected it to be the complainant's wife. To confirm the identity, the complainant asked the police to arrange for a DNA analysis of the corpse and his sister-in-law. After the analysis, Govt Lab concluded that the DNA profiles based on the deceased's blood sample and the sister-in-law's saliva sample might not be able to establish their kinship. In this connection, Govt Lab suggested that the police provide saliva or blood samples from both the complainant and his daughter for tests and analysis.

3. Govt Lab explained that it had taken seven months to complete the first DNA analysis because it included the waiting time as well as the actual time required for doing the analysis. As regards the time mentioned to the police for a sample from the complainant's daughter for another test, it referred only to the time required for the analysis without that for queueing.

4. Govt Lab indicated that requests for DNA analysis would be processed according to the information or requests provided by the police or other originating organisations. As to the case in question, since the police did not request speedy testing and the job itself did not warrant priority treatment, Govt Lab handled it in accordance with normal procedures.

5. This Office considered that, faced with the Government's tightening budget but an ever increasing demand for DNA analysis, it was reasonable and appropriate for Govt Lab to establish a priority system in processing cases according to their nature and urgency. We noted that conclusions drawn from laboratory analysis by Govt Lab involved professional judgment and decisions. These were not administrative issues and we would not comment on them.

6. In addition, under The Ombudsman Ordinance, Hong Kong Police Force was outside our jurisdiction except for complaints in relation to non-compliance with the Code on Access to Information. We would, therefore, not comment on the actions or decisions taken by the police in this case.

HIGHWAYS DEPARTMENT (Hy D)

Case No. OMB 2003/0133

Hy D – handling of enquiries – failing to follow up properly an enquiry on repair costs

The complainant damaged a safety buffer in a traffic accident. The Police completed investigation of the accident in eight months and referred the report to Hy D. Three-and-a-half months later, Hy D made a preliminary claim for damages from the complainant. Suspecting the accident to have been due to poor maintenance of the road surface, the complainant refused to pay and asked the Department to examine the cause of the accident more thoroughly. However, it was not until one-and-a-half years after her enquiry that the Department notified the complainant of the actual repair costs and its investigation findings. In all, it had taken the Hy D two-and-a-half years after the accident to complete calculating the damages.

2. Hy D admitted that it had not followed up the claim and responded to the enquiry according to established guidelines. This Office suggested that the Department apologise to the complainant in writing. It should also review its guidelines and procedures for recovery of costs and speed up the calculation of damages.

3. Hy D implemented our suggestions in August 2003 to streamline its recovery procedures. Besides handling its claims together with those involving Electrical and Mechanical Services Department facilities, Hy D undertook to inform the parties concerned of the estimated and actual repair costs within one month and six months respectively upon receipt of the Police investigation report.

Annex 9

Summaries of Selected Cases Concluded by Preliminary Inquiries

HOME AFFAIRS DEPARTMENT (HAD)

Case No. OMB 2003/0364

HAD – complaint handling – failing to handle seriously a complaint against illegal operation of holiday flats and to provide written replies

The complainant lodged a complaint in April 2002 with a District Office (DO) under HAD about illegal operation of holiday flats. However, HAD did not seriously handle the complaint and did not reply in writing.

2. In September / October 2002, the Office of the Licensing Authority (OLA) of HAD telephoned the complainant to tell him that a site inspection during office hours had not detected illegal operation of holiday flats. The complainant considered that OLA had failed to handle his complaint seriously as the case had been concluded after only one site inspection.

3. HAD stated that based on experience with the mode of operation of holiday flats, OLA had conducted six site inspections from May to October 2002 but detected no irregularities. In July, September and October 2002, the complainant was informed of the findings by telephone. Then in May 2003, a site inspection was conducted again to find the premises hired out as holiday flats. A warning letter was then issued to the operator.

4. We examined the report on the six inspections and noted that as OLA staff could not enter the premises, it was not possible to confirm whether there was illegal operation of holiday flats. This Office noted that the complainant had stated clearly that holiday-makers usually checked into the premises during Saturday nights or the evening immediately before public holidays. The six inspections by OLA had been conducted outside those specified periods.

5. This Office considered that OLA had indeed failed to look into the actual situation. If OLA had taken the complaint seriously for action earlier, delay for nearly a year could have been avoided.

6. As regards the failure to provide written replies, HAD indicated that a written reply had been given on the day DO received his complaint by telephone and by fax, telling him that the complaint had been referred to Lands Department (Lands D). In July and December 2002, DO had also informed the complainant of progress by telephone. A written reply on the result of the investigation had been given in February 2003. In addition, between May and October 2002, OLA had telephoned the complainant many times to update him on developments.

7. This Office considered that apart from the verbal reports on progress, DO and OLA should have given the complainant a detailed written reply early so that the complainant would know his complaint was properly handled.

8. Furthermore, as the complainant had stated clearly that there was illegal operation of holiday flats, this Office considered that DO staff should have promptly referred the complaint to OLA, the section responsible for handling such complaints. However, the staff were obviously not familiar with the ambit of their Department and referred the complaint to Lands D instead. It was on the advice of Lands D that DO reverted to OLA for action.

9. This Office considered that the staff concerned should be more alert about the nature and substance of complaints in order to refer them promptly to the appropriate office.

HOSPITAL AUTHORITY (HA)

Case No. OMB 2003/0745

HA – service charges – impropriety of a public hospital in charging for Accident and Emergency services

The complainant's son, injured in an accident at school, was taken to a public hospital. Upon registration at the Accident and Emergency (A&E) Department, he was initially assessed by a duty nurse for triage. On learning that her son would have to wait for 90 minutes to see the doctor, the complainant considered that too long. She asked a nurse whether she would need to complete any formalities and pay the fees if they wanted to leave. The nurse said it was not necessary. However, the complainant later received a bill for A&E charge. She considered that the charging policy was unclear and that the nurse had misled her.

2. The hospital explained that the triage process was part of the A&E services. Once registered and triaged, even if the patient decided not to receive medical treatment, the fee still applied. The nurse concerned did not remember the incident or details of her conversation with the complainant. On receipt of this complaint, HA had apologised to the complainant and posted notices in the A&E Department to inform the public of the charges for A&E services.

Summaries of Selected Cases Concluded by Preliminary Inquiries

HOUSING DEPARTMENT (HD)

Case No. OMB 2003/0837

HD – building maintenance – failing to take proper follow-up action to replace a cracked glass panel at a shopping centre for more than six months

In August 2002, HD's management contractor (the company) observed a cracked glass panel at a shopping centre under its charge. The company reported to the police and wrote to HD on the following day to request its architect to conduct a thorough investigation, pointing out that "latent defects" of the glass panel might have been the cause. HD architect replied that the responsibility to follow up the incident and investigate the cause (including whether there were "latent defects") rested with the company.

2. After corresponding with HD several times, the company wrote again in October 2002 reiterating that the cracks had been caused by "latent defects" and not "vandalism", and requesting funds for replacing the glass panel. HD considered the request unreasonable and asked the company to continue probing for the cause.

3. In January 2003, HD sent a letter to the company, requesting immediate replacement of the glass panel. The company placed an order with the supplier in late March. The new glass panel was at last installed at the end of May.

4. The complainant considered it maladministration on the part of HD since it had failed to properly pursue the replacement of the glass panel solely because of the hanging dispute.

5. This Office noted that while HD had consistently refused to accept "latent defects" as being the cause, it had not taken up the investigation itself nor suggested any specific solution to the problem. It had just allowed the problem to drag on. This was inappropriate.

6. As the cracked glass panel was located at a busy shopping centre, The Ombudsman considered that for public safety, HD should have proceeded to replace the glass panel at once after collecting evidence for tackling the responsibility issue.

Summaries of Selected Cases Concluded by Preliminary Inquiries

INLAND REVENUE DEPARTMENT (IRD)

Case No. OMB 2002/2569

IRD – recovery of tax – (a) delay in recovering from the complainant the overdue profits tax unpaid by his former business partner; and (b) miscalculation of the complainant's tax assessment

The complainant was in a partnership business from November 1987 to April 1988. He complained against IRD for not recovering from him until ten years later the overdue profits tax unpaid by his former business partner and failing to disclose to him details of the Department's recovery action taken against his former partner.

2. Between 1992 and 1995, IRD took tax recovery action against the complainant's former business partner. However, such action stopped when the Department could not locate him. On learning of his whereabouts in 2001, the Department reactivated the case and resumed its action, but still without success. As the complainant was a partner jointly and severally liable for the tax of the business, IRD also took action against him to recover the outstanding tax. Due to an oversight of its staff in checking the records, the Department failed to notice that the complainant had ceased to be a partner of the business since April 1988 and miscalculated the tax payable in demanding payment of tax for the whole of the year 1988 / 89.

3. IRD subsequently apologised to the complainant, explained its tax recovery action and adjusted the amount of tax payable by the complainant. Nevertheless, according to the secrecy provisions of the Inland Revenue Ordinance, the Department could not disclose to the complainant details of its tax recovery action against his former business partner.

4. This Office considered that there was delay on the part of IRD when it processed this case. It had also miscalculated the tax payable by the complainant. To avoid recurrence of such incidents, the Department had reviewed its procedures and implemented clearer guidelines.

Annex 9

Summaries of Selected Cases Concluded by Preliminary Inquiries

INLAND REVENUE DEPARTMENT (IRD)

Case No. OMB 2003/2147

IRD – change of address – failing to handle properly a company's notification of change of business address

The complainant alleged that the Business Registration Office (BRO) under IRD had failed to handle properly her company's notification of change of address.

2. IRD explained that it had received a Notification of Change of Business Address from the company in July 1999 and accordingly amended its records of the company's business address from Address A to Address B. In September 1999, IRD received the company's 1998 / 99 profits tax return and noted that the "Main Business Address in Hong Kong" stated in the return was Address A. IRD staff of Unit One responsible for handling profits tax referred the information to BRO, which then revised the records back to Address A in accordance with the Business Registration Ordinance.

3. In the ensuing years, however, all documents sent to Address A by BRO were returned undelivered. Each time, BRO staff would use the computer programme to automatically search for the company's correspondence address in its tax files and redirect the documents to Address B. Although the staff of Unit One and BRO had explained the situation to the company in writing and by telephone repeatedly and reminded it to notify BRO of its change of business address in writing with signature, the company did not do so.

4. Finally in July 2003, while checking the company's tax files, BRO discovered that the company had actually stated in its profits tax returns for 1999 / 2000, 2000 / 01 and 2001 / 02 Address B as its "Main Business Address in Hong Kong". Consequently, BRO decided to accept the company's change of business address to Address B and telephoned to notify the company of its decision.

5. This Office considered that IRD had changed the company's business address from Address B to Address A according to the relevant legislation. It was also reasonable for BRO to ask the complainant for an original copy of her signed notification to verify the signature and ensure authenticity of the information.

6. Nevertheless, upon the Unit One referral in September 1999 that the company's stated business address was Address A, BRO staff should have been aware that the company had just changed its address from Address A to Address B two months earlier. Had BRO taken the initiative to clarify with the company, the problem could have been resolved and the

incident avoided. Moreover, when BRO staff could not contact the company with Address A, they did not follow up promptly so that the misdirection of documents continued for some years, causing waste of time and resources.

7. On the other hand, the company was also responsible. Though the company had changed its address to Address B in July 1999, it still stated Address A as its business address when submitting its tax return in September 1999. Moreover, BRO had redirected the relevant documents to Address B several times, each time reminding the company to update its business address and notify BRO in writing. Unfortunately, the company ignored the reminders.

8. This Office considered both BRO and the company to be responsible for this incident. IRD had reviewed the relevant procedures and reminded staff to follow up similar cases of inconsistent addresses. Meanwhile, IRD had apologised to the company for the inconvenience caused.

LANDS DEPARTMENT (Lands D)

Case No. OMB 2002/3536

Lands D – unauthorised structures – inconsistent advice as to its toleration standard; and disparity in enforcement action

In December 2000, staff of a District Lands Office (DLO) under Lands D inspected the complainant's premises to measure her unauthorised rooftop structures (including a canopy, some glass panes and window rails). While the staff explained to her the toleration standard of Lands D towards such structures, they did not state clearly whether or not the glass panes under the canopy and the rails should be removed. In response to DLO's advisory letter of October 2001, the complainant removed the glass panes. Subsequently, DLO staff visited the complainant's premises five times to inspect the rooftop, but no one answered the door. The five "messages" left by DLO staff were also ignored, so the case remained unresolved. In May 2002, DLO tightened its toleration standard towards unauthorised structures. Since the complainant's case had not yet been concluded, the glass panes and rails that remained became subject to the new standard, so DLO demanded their removal. The complainant thus felt that DLO had given her inconsistent advice.

2. This Office found that DLO staff had only given verbal advice to the complainant about Lands D's toleration standard without stating clearly which parts of the structures could be

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retained. The subsequent advisory letter again failed to explain that, thus easily leading to misunderstanding. Furthermore, DLO staff only left the complainant a "message" each time despite their five unsuccessful attempts to access her premises in seven months. They had never sent her a formal letter about their intention to conduct a site inspection. This was quite inadequate.

3. As regards the complainant's allegation of Lands D's disparity in enforcement action against her neighbour, the latter had in fact rectified part of his unauthorised structures before the tightening of the toleration standard, and obtained DLO's consent to retain the remaining canopy and small glass panes. As for other cases in the village, DLO had already issued advisory letters to the owners concerned, registered the advisory letters with the Land Registry and would continue to take enforcement action. There was, therefore, no disparity in enforcement action.

4. Lands D had issued new guidelines to all DLOs to improve communication between their staff and property owners concerned and to ensure consistent application of the toleration standard towards unauthorised structures, avoiding any impression of inconsistency and unfairness.

LANDS DEPARTMENT (Lands D)

Case No. OMB 2003/0216

Lands D – short-term tenancy for garden use – charging excessive rental by improperly including car park rental; and poor staff attitude

The complainant alleged that a District Lands Office (DLO) of Lands D had over-charged rental for his short-term tenancy (STT) for a garden area for five years by including rental for a car park without his knowledge or application. He claimed that he had never parked any car there. However, DLO confirmed that a car had been found in the garden area during a site inspection prior to assessment of the STT rental. Following normal procedures, DLO had charged him rental which covered a car park, without stating it. Lands D pointed out that it would have explained to the complainant if he had queried the rental calculation before accepting the offer. Since the complainant had accepted the tenancy, he was liable for the agreed rental. Upon expiry of the first tenancy and the complainant's appeal, DLO reduced the rental of the second tenancy to exclude rental for car park although a car had twice been found parked there during site inspections.

2. Regarding the complaint of staff attitude, Lands D explained that when the complainant telephoned DLO to enquire about the rental issue, the officer concerned was on leave. Without knowledge of the details, his senior could only respond in general terms but had no intention to "pass the buck". When another officer called the complainant the next day to explain the general procedures for rental appeals, the complainant was not satisfied with the reply. In the absence of an independent witness, this Office could not draw any conclusion on staff attitude.

3. The Ombudsman suggested that DLO should apologise to the complainant for failing to provide him with clear information on the rental calculation in its letter offering STT. To ensure fairness and clarity, Lands D should review its procedures to state clearly in its offer letter whether rental included a car park. It should also issue guidelines to staff. Lands D had accepted our suggestions.

LANDS DEPARTMENT (Lands D)

Case No. OMB 2003/0252

Lands D – Government rent exemption – (a) refusing to recognise the complainant's "succession status"; (b) unreasonably rejecting his application for Government rent exemption; (c) delaying response to his enquiries on the progress of his application; and (d) failing to send the notification letter to his current address

Relevant Legislation

Under Section 4(1) of the Government Rent (Assessment and Collection) Ordinance (the Ordinance), Government rent may be exempted for an eligible lease of a rural property which an indigenous villager held on 30 June 1984 and which continues to be held by the indigenous villager or a lawful successor in the male line of the indigenous villager. Section 4(2) of the Ordinance states that Government rent exemption applies to a lease of a rural property that an eligible "tso" or "tong" held on and since 30 June 1984.

Complaint (a)

2. According to the complainant, the lot in question used to be held by a "tso" of which his late maternal grandmother was the manager. As there was no male descendant from his maternal grandmother's own family, the "succession status" had been conferred on him and

he had succeeded his grandmother as manager and so recognised by the "tso". Nevertheless, Lands D was of the view that he had not acquired the lot through the male line of succession and, therefore, did not recognise his "succession status". The complainant considered it unreasonable.

3. Lands D explained that the lot had been held by the "tso" on 30 June 1984 and conveyed to the complainant on 19 March 1985. As the complainant had acquired the lot by assignment, he was not a "lawful successor in the male line" according to Section 4(1) of the Ordinance. Furthermore, the property of a "tso" / "tong" had to be handled in accordance with Section 4(2).

4. This Office considered that Lands D had handled the case in accordance with the law. There was no maladministration.

Complaint (b)

5. The complainant claimed that conveyance of the lot had been approved by the local District Officer in February 1984 and verified by the Registrar General in December of the same year. Nevertheless, Lands D was of the view that the relevant procedures had not been completed until 19 March 1985. It, therefore, rejected his application for rent exemption. The complainant considered it unfair. Lands D further stated that the lot was not eligible for rent exemption because it was held in the name of the complainant instead of the "tso" / "tong". Being the manager of a "tso", the complainant considered that it made no difference whether the lot was held in the name of an individual or the manager of the "tso" because there was no descendant in the family.

6. Lands D explained that according to the Registrar General's records, conveyance of the lot had been completed on 19 March 1985. It was, therefore, not eligible for rent exemption under Section 4(2) of the Ordinance. This Office considered that according to the law, holding a lot in the name of the a "tso" / "tong" was different from holding it in the name of an individual.

Complaint (c)

7. The complainant claimed that he had made several enquiries on the progress of his application for rent exemption since 1995, but Lands D had not responded promptly.

8. According to Lands D, the complainant submitted his application for rent exemption in 1995. As there were some 120,000 applications and the Department was short of manpower, it could not issue the preliminary notification until December 2000 and the final notification letter until January 2001. In March 2002, the complainant re-applied. The Department replied

with a copy of the final notification letter in June 2002. He wrote several times to Lands D to ask for reasons for rejecting his application and to lodge an appeal. The Department had responded promptly each time.

9. This Office considered that Lands D had responded specifically to his enquiries within a reasonable period of three weeks and there was no delay.

Complaint (d)

10. The complainant claimed that Lands D had sent the final notification letter to his previous address so he had not been able to receive it.

11. Lands D explained that it had not received any notice of change of correspondence address or notice of non-delivery from the Post Office since receipt of the complainant's application in 1995. It was not aware that the complainant had moved.

12. This Office accepted Lands D's explanation.

LANDS DEPARTMENT (Lands D) AND DRAINAGE SERVICES DEPARTMENT (DSD)

Case Nos. OMB 2003/0741
OMB 2003/1176

Lands D and DSD – processing of small house application – inadequate inter-departmental communication affecting the complainant's project

The complainant alleged that a District Lands Office (DLO) of Lands D had mishandled his small house application by failing to take into consideration the resumption of land for DSD's proposed drainage improvement programme. He received a resumption notice when his small house was under construction. He also complained against DSD for failing to notify Lands D of the land resumption in time.

2. According to Lands D's instructions, DLOs should consult relevant departments when processing small house applications but there was no standard consultation list. In this case, DLO had no information regarding DSD's proposed improvement programme and land resumption when it processed the complainant's application. It had approved the application

after consulting two relevant departments, Water Supplies Department and Planning Department. It had no idea that the complainant's lot was within the land resumption area until it received DSD's land clearance application.

3. This Office considered that DLO should have included DSD for consultation because the complainant's small house lot was very close to a river. Should flooding occur, drainage works would be required. Similarly, DSD should have notified DLO of its proposal in good time so that the latter could take it into account when processing small house applications.

4. On receipt of the complaint, DLO made an apology to the complainant and advised DSD to exclude his lot from resumption. DSD subsequently revised the boundary of its land resumption and agreed to exclude the complainant's lot.

5. This case reflected the inadequate communication between Lands D and DSD. Both departments accepted The Ombudsman's advice to improve their consultation and coordination and be more considerate to the public.

LANDS DEPARTMENT (Lands D) AND HOME AFFAIRS DEPARTMENT (HAD)

Case Nos. OMB 2003/0720
OMB 2003/0721

Lands D and HAD – change of land use – inadequate public consultation

The site in question was zoned "Government / Institution / Community" and was meant to be developed into a park in the long term. At the request of some LegislativeCouncillors and District Councillors, Lands D considered using the site as a temporary car park for goods vehicles. In accordance with its departmental guidelines and procedures, the District Lands Office (DLO) concerned under Lands D sought the views of other relevant departments. They raised no objection to the proposal.

2. DLO also sought assistance from the local District Office (DO) of HAD to conduct public consultation. According to the existing policy, for large-scale developments having a significant impact on the whole district, DO would assist the departments concerned to seek the District Council's views. For small-scale projects, DO should verbally consult the local District Councillors or residents' organisations concerned. In this case, DO verbally consulted

two District Councillors, one local and the other from the neighbouring district, both of whom supported a temporary car park for goods vehicles on the site in question.

3. This Office considered there was no maladministration on the part of DLO as it had consulted the departments concerned and arranged public consultation through DO before granting a short-term tenancy for car park use.

4. However, DO was not thorough enough in consulting only two District Councillors without seeking the views of local residents' organisations. Furthermore, as the District Councillors concerned regarded DO's consultation only preliminary, they did not consult local organisations either.

5. This Office suggested that, when consulting District Councillors, DOs should explain in detail the consultation procedures to avoid misunderstanding. HAD accepted our suggestion.

LAND REGISTRY (LR)

Case No. OMB 2003/2639

LR – insufficient guidelines – failing to provide user-friendly guidance to the public for filing applications and charging fees for reswearing of amended memorials

The complainant applied to LR for registration of individual lodgement of deeds. After she had submitted the memorial forms, an LR officer notified her that there were some errors. First, the name of her late husband on the memorial forms and the Certificate of Exemption from Estate Duty did not accord with that on the Death Certificate or LR records. Then, the particulars regarding undivided shares of the property cited in the memorial forms and the Certificate of Exemption were incomplete. She had, therefore, to make corrections, reswear and resubmit the forms at a fee.

2. The complainant alleged that LR's guidance notes for individual lodgement did not specify how names should be entered on memorial forms. She claimed reimbursement of fees for resubmitting the forms, and suggested that The Ombudsman should initiate action for Government departments to introduce user-friendly guidance so that ordinary citizens could file their applications without the need to seek legal assistance.

3. This Office noted that detailed guidance – the Memorial Form Easy Guide – was already available on the LR website, giving step-by-step answers to problems in completing memorial forms. However, the information sheet "Points to Note for Lodging a Deed to the Land Registry for Registration" made no mention of this electronic guide. At our suggestion, LR added a note to the information sheet advising the public to refer to the Easy Guide on the website.

4. As LR charged fees in accordance with the conditions set out in the application forms and the Land Registration Fees Regulations, this Office was not in a position to intervene.

POST OFFICE (PO)

Case No. OMB 2003/0229

Post Office – counter service – failing to advise the complainant of the requirements of Prepayment in Money mailing service

The complainant alleged that on two occasions, the staff of a post office had made things difficult for her when she used the Prepayment in Money (Prepayment) service to send out business mail. On the first occasion, the staff had asked her to tie the letters in bundles of 50; then on the second occasion, she was told she could not use the service as her letters were non-standard mail. The complainant had used the same service for similar mail at the same post office before but had never been advised of these requirements.

2. PO explained that in the first incident, the staff was just acting according to established service guidelines, whilst the second occasion might have been caused by a new officer's inadequate knowledge of the service. As to whether the staff of the post office had previously advised the complainant of the requirements, she was not a regular user of the service and the Department could not comment on this point. Nevertheless, PO apologised to the complainant, both for its staff's failure to explain the requirements when she first used the service and for her unhappy experience in the second incident. It also arranged proper training for the staff concerned.

3. This Office considered that as the frontline staff provided services to a large number of people every day, it would be almost impossible to explain to all customers the detailed requirements of its services. In case of doubt, users should ask the staff or obtain copies of information pamphlets for reference. We also recommended that PO remind its frontline

staff to offer all users of business mail service a copy of the brochure "Sending Local Mail in Hong Kong – a Guide for Business" for reference. Moreover, it should add such words as "Applicable to all types of mail (standard and non-standard)" in the Prepayment section of the brochure. PO undertook to introduce the proposed improvement measures.

POST OFFICE (PO)

Case No. OMB 2003/0541

Post Office – complaint handling – failing to handle seriously a complaint against loss of mail parcel

The complainant sent four pens, valued at HK$8,000, by registered mail to his son in the United Kingdom (UK) as a Christmas gift. As the UK Customs and Excise levied heavy duty on those pens, his son refused to accept them and they were returned to the sender. However, after a few months, the complainant still had not received those pens. He, therefore, enquired with PO. About three months later, PO informed him that the Royal Mail had confirmed those pens as being lost. In accordance with the Universal Postal Union (UPU) regulations, PO agreed only to offer compensation of HK$320. The complainant did not accept HKP's offer and alleged that it had not been serious in handling his complaint against the loss of mail and failed to trace the cause for the loss. He was also dissatisfied that the staff of the Mail Tracing Office had taken a long time to answer his call and he felt cheated that he had not been informed beforehand of the compensation ceiling.

2. PO explained that in handling enquiries on mail, it had to write to the postal administration of destination first to seek information. UPU stipulated that the postal administration of destination (the Royal Mail in this case) should respond to such enquiries within two months. When PO acknowledged the enquiry, it had already explained this point to the complainant. PO stressed that it had tried its best to locate the lost mail for the complainant.

3. As for the allegation that when he enquired with the Mail Tracing Office, his call was answered only some 20 minutes later, PO's records showed that the complainant had telephoned during off-peak hours. With four officers on duty, there should have been sufficient manpower to ensure callers that did not have to wait too long.

4. This Office noted that UPU stipulated the maximum compensation payable for loss or damage of registered mail to be equivalent to HK$320. This was listed in the Guide on Postage Rates and Services available for viewing at post offices free of charge.

5. Records on this case indicated that PO had actively followed up the complainant's case. However, as the loss took place in UK, there was difficulty for PO to trace the item. The Royal Mail had already accepted full responsibility and extended its apology for the loss. This Office considered that PO was not at fault in this case.

6. Regarding the alleged delay in answering the complainant's call, the complainant's version differed from PO's explanation. We could not make a judgment in the absence of any supporting evidence.

7 As for compensation for the lost item, we considered that PO had acted in accordance with established guidelines and no impropriety was involved. Nevertheless, this Office advised PO to include information on the compensation ceiling on the receipt for registered mail for the information of senders. Our suggestion is under consideration by PO.

RATING AND VALUATION DEPARTMENT (RVD) AND LANDS DEPARTMENT (Lands D)

Case Nos. OMB 2003/0487
OMB 2003/0996

RVD – Government rent – (a) misleading the complainant into thinking that she was not required to pay; (b) delaying the demand for payment for four years; (c) failing to confirm the amount; and (d) giving improper advice

Lands D – Government rent – (e) delaying notification to RVD of cancellation of rent concession

In July 1999, after purchasing a flat, the complainant notified RVD of change of ownership. She claimed to have received a Demand Note for Rates in late 1999 which showed the amount of Government rent to be zero. However, RVD stated that no such demand note had been issued to the complainant. Instead, an acknowledgement slip on change of payer's name had been sent to the complainant's husband in 1998 with the printed remark "No outstanding amount", because the rates and Government rent for the property had been settled then.

2. The property in question was previously owned by an indigenous villager, for whom Lands D had approved a rent concession in 1998 under the Government Rent (Assessment and Collection) Ordinance. The complainant then became the owner of the property in July 1999 and was not entitled to the rent concession. Lands D did not notify RVD of the cancellation of the concession until March 2001 so that assessment of Government rent for the property could not be carried out earlier. Lands D explained that the delay had been caused by their heavy caseload and manpower constraints. RVD said they had a similar problem and, therefore, could not assess the Government rent for the property until February 2003, two years after receipt of Lands D's notification. As a result, the complainant had to pay substantial arrears of Government rent.

3. This Office considered that there had been delay on the part of both Lands D and RVD. RVD should have given the complainant an explanation. We also suggested that RVD consider allowing her to pay her arrears of Government rent by instalments.

4. RVD admitted that a demand note bearing the amount payable had not been sent together with a Notice of Interim Valuation to the complainant. Furthermore, their staff had given misleading advice on the complainant's application for payment by instalments.

5. In response to the suggestion of this Office, RVD apologised to the complainant. To avoid recurrence, RVD also undertook to give guidelines for staff on handling such cases.

TRANSPORT DEPARTMENT (TD)

Case No. OMB 2003/0437

TD – traffic signals – neglecting the views of organisations of visually impaired persons in implementing the Electronic Audible Traffic Signals Project

An organisation serving visually impaired persons complained against TD for neglecting the views of organisations of that sector (relevant organisations) in the replacement of electro-mechanical audible traffic signals (ATS) with electronic ATS (e-ATS). It alleged that the Department's consultation was "a mere gesture" and the replacement project jeopardised the safety of visually impaired persons.

2. Electro-mechanical ATS at pedestrian crossings aim to assist visually impaired persons in crossing the roads. However, the sound from such ATS could only be set at a fixed level. They might, therefore, cause nuisance to nearby residents at night. TD, therefore, arranged

for some of the equipment to operate only between 7 a.m. and 11 p.m. However, that was opposed by relevant organisations, which demanded a 24-hour operation. To strike a balance between the interests of visually impaired persons and residents, TD began a study in 2000 on the feasibility of replacing the electro-mechanical ATS with e-ATS capable of automatic adjustment of sound level, and started testing and assessing the performance of different products.

3. In the process, TD maintained close contact with the relevant organisations. From March 2000 to August 2002, TD held 13 consultation sessions to seek opinions from the relevant organisations and other members of the public.

4. In August 2002, TD arranged site inspections for representatives of the relevant organisations to test several models of e-ATS. Some representatives expressed concern over the "directional function" of e-ATS, indicating that the equipment should be able to help visually impaired persons to find the traffic signals. They also gave their opinions on the "directional function" of various products, and held that one of the products performed better. TD, however, pointed out that its procurement procedures had to comply with the Administration's open tender policy. It could set out the specifications for the equipment but could not specify a certain brand. In fact, the specifications in the tender documents had taken into account most of the opinions raised by the relevant organisations. However, the "directional function" was regarded only as an "ancillary" function, and the operational specifications of "directional function" were not set out. One of the relevant organisations (the complainant) complained afterwards that the "directional function" of the new e-ATS was inadequate.

5. TD pointed out that some of the relevant organisations supported the new e-ATS, whilst some visually impaired persons who had received orientation and mobility training considered that after adjustment of the sound level, the new equipment had proved useful in directing them to cross the roads safely. Meanwhile, a small number of relevant organisations provided written suggestions to TD on technical improvements, but they did not raise any objection to the use of the new equipment.

6. After examining all relevant information, this Office noted that since 2000, TD had started to consult the relevant organisations and the public on the replacement project. The Department had earnestly listened to comments and its consultation was not "a mere gesture". Nonetheless, the Department had not examined in detail the express concern of the relevant organisations over the "directional function" of the e-ATS. If it had clarified and included the operational specifications of "directional function" into the tender documents, it would not have been necessary to take a series of remedial measures after the new equipment had

been installed. The replacement project should undoubtedly take into account the needs of visually impaired persons. However, TD had to strike a balance between the interests of different parties. TD was right to strive to meet the expectations both of visually impaired persons and the nearby residents.

7. This Office considered that although TD could have done better in its consultation and examination of public opinions, there was no impropriety.

Summaries of Selected Cases Concluded by Mediation

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD) AND HOUSING DEPARTMENT (HD)

Case Nos. OMB 2003/3450
OMB 2004/0466

FEHD and HD – refuse collection – failing to properly arrange for refuse collection in a Home Ownership Scheme estate, which led to deterioration in environmental hygiene

The complainant's son was attending a kindergarten in a Home Ownership Scheme estate. She complained that the open car park opposite the kindergarten was being used by the estate management office as a refuse collection point. Stench emitted from the refuse when FEHD staff collected it every morning, causing nuisance to her son's classes and posing a threat to his health. The complainant had written to FEHD several times requesting better arrangements for environmental hygiene. The Department only replied that the matter had been referred to HD but did not take any further action. As the problem persisted, the complainant considered there was maladministration on the part of FEHD and HD.

2. As the case did not involve serious maladministration, we suggested resolving it by mediation and all the parties concerned consented.

3. At the mediation meeting, the complainant gave her opinions on the arrangements for refuse collection. Representatives from FEHD and HD explained their respective follow-up actions and the reasons for not changing the place or time for refuse collection. FEHD and HD also made a number of suggestions on how to improve the environmental hygiene in the estate.

4. Candid discussion resulted in better understanding of one another's position and an agreement on solutions to the environmental hygiene problems in the estate. HD undertook to liaise more closely with the estate management office to ensure that refuse would be placed at the collection point only 30 minutes before the arrival of FEHD vehicle and that all refuse containers would be tightly closed. The cleansing contractor would wash the collection point thoroughly every day and FEHD staff would continue their regular refuse collection there.

5. HD undertook to contact the owners' corporation for meetings with relevant Government departments to identify a suitable location within the estate for a permanent refuse collection point for the longer term.

6. The complainant agreed that her case should be closed.

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Summaries of Selected Cases Concluded by Mediation

HOUSING DEPARTMENT (HD)

Case No. OMB 2003/2675

HD – estate maintenance – reluctance and delay in following up a complaint about water seepage through external wall

The complainant, owner of a flat in a Home Ownership Scheme (HOS) estate, noticed water seepage through the external wall. He lodged his complaint with a Housing Manager and a Maintenance Surveyor of HD and requested repair. However, HD staff in the two sections shirked their responsibility and refused to take action.

2. HD explained that as the estate had been occupied for over three years and the warranty had expired, the owner would need proof from authorised professionals that the problem was a "latent defect" before HD's main building contractor would carry out repair.

3. HD was at that time discussing with the main contractor a number of maintenance and repair problems in the estate without reaching agreement. Subsequently, HD decided that for all items in the estate already categorised as "latent defects" (including water seepage through external walls), it would not be necessary to engage an independent surveyor to investigate into the defects. The Department would arrange for its term contractor to carry out the repairs and then seek reimbursement of the costs and on-costs from the main contractor.

4. As the case involved no grave maladministration, this Office suggested resolving the matter by mediation. Both parties agreed.

5. At the mediation meeting, the complainant recounted his demand for repair of the external wall and the interior of his flat, while an HD representative explained in detail the background regarding HD's processing of the case and its current action in maintenance and repairs.

6. After a candid exchange of views, the two parties signed a mediation agreement. The complainant agreed to withdraw his complaint against HD while the latter undertook to repair the external wall and the areas showing seepage inside his flat. The repair work was expected to be completed within seven working days.

Summaries of Selected Cases Concluded by Mediation

LEISURE AND CULTURAL SERVICES DEPARTMENT (LCSD)

Case No. OMB 2003/2382

LCSD – termination of contract – staff breaching an agreement and requesting the complainant to remove all restaurant equipment, whilst refusing to refund part of the security deposit

The complainant was formerly a contractor for a light refreshment restaurant in a LCSD indoor sports centre. The restaurant was later wound up and the complainant claimed to have applied to the Department to allow her to store tables, chairs and other equipment temporarily at the premises until a new operator took over the business. She also requested the Department to refund half of her security deposit. She alleged that LCSD staff had originally agreed to her requests, but then they broke their promise and rescinded their agreement.

2. LCSD explained that as conversion works would soon be carried out to convert the restaurant site into recreational facilities, the complainant was asked to remove all equipment from the restaurant and return the storeroom in accordance with the contract. Nevertheless, the Department had exercised its discretion and allowed the complainant to leave the tables and chairs at the site until conversion works began. Moreover, since the complainant's security deposit was in the form of bank guarantee, the Department was in fact not directly holding her deposit. There was, therefore, no question of refund of the deposit.

3. As the case did not involve serious maladministration, this Office suggested resolving the matter by mediation and both parties agreed.

4. At the mediation meeting, the complainant recounted her request for the Department's permission to leave all the equipment in the restaurant and refund of part of her security deposit. LCSD representative explained how the Department had handled the case and proposed possible solutions to the problem.

5. After a candid exchange of views, LCSD agreed to allow the complainant, without further extension of the bank guarantee period, store the tables and chairs in the restaurant area temporarily until commencement of conversion works towards the end of March 2004. Meanwhile, the complainant had to remove all other equipment and vacate the storeroom by the end of November 2003. The complainant accepted the arrangements and the two parties reached an agreement.

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(Cases with * have recommendation(s) in the investigation reports.)

Agriculture, Fisheries and Conservation Department

2002/1163	Misleading the complainant in her enquiry about her lost three-legged dog, which was euthanised at an Animal Management Centre in the course of her search	Substantiated*
2002/3586	(a) Impropriety in the collection of dogs surrendered by the complainant; (b) Excessive use of force in the collection process; and (c) Providing the complainant with inaccurate information as to the time of euthanasia	Partially substantiated*
2003/0945	Delay in processing an application for Livestock Keeping Licence for quails	Substantiated*

Architectural Services Department

2002/2484	Impropriety in handling an application to include a water-proof product in the approved list of ASD	Partially substantiated*
2003/0649	Failing to provide prompt and appropriate services to an aided school in the back-flow of sewage into its lift pit on three occasions	Substantiated*

Buildings Department

2002/3267	Failing to update the complainant's correspondence address as requested	Partially substantiated*
2002/4085	Delay in the issue of dangerous slope repair order to property owners	Partially substantiated*
2003/0288	Failing to enforce closure orders against huts	Unsubstantiated
2003/0981	Failing to issue advisory letters and removal orders concurrently on three items of unauthorised building works in the same property	Partially substantiated*

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2003/1651	Failing to follow up complaints about unauthorised building works, hygiene and pollution problems at two adjacent streets	Unsubstantiated
2003/2024	Failing to coordinate with Environmental Protection Department in the issuance of removal orders and advisory notices on unauthorised building works	Partially substantiated

Correctional Services Department

2002/3445	(a) Failing to fulfill a promise to set up a religious choir after the complainant had provided musical instruments and associated items; and (b) Forcing him to donate musical instruments and associated items	Unsubstantiated*
2002/4566	(a) Falsely representing to the Security Bureau that all records relating to the complainant had been destroyed; (b) Failing to comply with Prison Rule 11 in handling his property; (c) Failing to record his request for getting back part of his property ; and (d) Misleading the court	Partially substantiated*

Department of Health

2002/1879	Impropriety in verifying personal identity documents	Unsubstantiated*
2003/0422	(a) Unfair queuing system in the out-patient service of a public clinic; (b) Lack of appropriate guidelines to determine if extra outpatient service should be provided when the day's quota was exhausted; and (c) Improper handling of the complaint by a nursing staff	Partially substantiated*

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Environmental Protection Department

2003/1654	Failing to follow up complaints about unauthorised building works, hygiene and pollution problems at two adjacent streets	Unsubstantiated
2003/2025	Failing to coordinate with Buildings Department in the issuance of removal orders and advisory notices on unauthorised building works	Partially substantiated
2004/0197 2004/0200 2004/0203 2004/0206 2004/0209 2004/0212 2004/0215 2004/0218 2004/0221 2004/0224 2004/0227 2004/0230 2004/0233 2004/0236 2004/0239 2004/0242 2004/0245 2004/0248 2004/0251 2004/0254 2004/0257 2004/0260 2004/0263 2004/0266 2004/0269 2004/0272 2004/0275 2004/0278 2004/0284 2004/0287 2004/0290 2004/0293 2004/0296 2004/0299	Complaints by a number of residents at two private housing estates against EPD, Hy D, HAD, Lands D, Plan D and TD for changing the land use of a site in Tuen Mun to truck loading / unloading and storage without prior consultation with them, and that this would cause the nuisance	Unsubstantiated

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Food and Environmental Hygiene Department

2003/0567	Poor staff attitude and impropriety in handling a complaint	Partially substantiated*
2003/0664	Mishandling a withdrawal of food business licence transfer application	Substantiated*
2003/1652	Failing to follow up complaints about unauthorised building works, hygiene and pollution problems at two adjacent streets	Unsubstantiated*
2003/2710	"Buck-passing" between two departments in handling a complaint arising from inadequate action to eliminate safety hazards caused by branches of a tree outside the complainant's flat	Unsubstantiated

Government Property Agency

2002/3014	Disclosing the complainant's personal data to the complainee without his prior consent	Substantiated*
2003/2484(I)	Mishandling a request under the Code on Access to Information	Partially substantiated*

Government Secretariat - Education and Manpower Bureau

2002/4649	Unreasonably rejecting applications by a tutorial school for restructuring of fee regimens and related matters	Partially substantiated*
2003/1892	Failing to follow established guidelines in properly handling a complaint lodged against a school that has assessed the complainant as a surplus teacher	Partially substantiated*

Government Secretariat - Efficiency Unit

2003/0209	Improper handling of the complainant's telephone enquiry by Integrated Call Centre	Unsubstantiated

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Highways Department

2004/0198 2004/0201 2004/0204 2004/0207 2004/0210 2004/0213 2004/0216 2004/0219 2004/0222 2004/0225 2004/0228 2004/0231 2004/0234 2004/0237 2004/0240 2004/0243 2004/0246 2004/0249 2004/0252 2004/0255 2004/0258 2004/0261 2004/0264 2004/0267 2004/0270 2004/0273 2004/0276 2004/0279 2004/0285 2004/0288 2004/0291 2004/0294 2004/0297 2004/0300	Complaints by a number of residents at two private housing estates against EPD, Hy D, HAD, Lands D, Plan D and TD for changing the land use of a site in Tuen Mun to truck loading / unloading and storage without prior consultation with them, and that this would cause nuisance	Unsubstantiated

Home Affairs Department

2002/4452 2002/4473	Providing improper assistance to a property owner for forming an owners' corporation	Substantiated*

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2003/1782	Entering the complainant's name in the voter register of another village, so that he was disqualified from standing for the Village Representative election	Substantiated*
2003/3504 2003/3505 2003/3506 2003/3507 2003/3508 2003/3509 2003/3510 2003/3511 2003/3512 2003/3513 2003/3514 2003/3515 2003/3516 2003/3517 2003/3518 2003/3519 2003/3520 2003/3521 2003/3522 2003/3523 2003/3524 2003/3525 2003/3526 2003/3527 2003/3528 2003/3529 2003/3530 2003/3531 2003/3533 2003/3534 2003/3535 2003/3536 2003/3537 2003/3538	Complaints by a number of residents at two private housing estates against EPD, Hy D, HAD, Lands D, Plan D and TD for changing the land use of a site in Tuen Mun to truck loading / unloading and storage without prior consultation with them, and that this would cause nuisance	Unsubstantiated

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Hospital Authority

2002/0278	Improper handling of transfer arrangements for the complainant's critically-ill brother and failing to provide the complainant with the investigation report as promised	Partially substantiated*
2002/0397	Malpractice on the part of Hong Kong Eye Hospital for twice deferring the operation date of the complainant's father and misleading patients into believing that an eye operation would be carried out in about one year	Unsubstantiated
2002/1215	(a) Impropriety on the part of an HA hospital in asking an in-patient's relatives to perform a medical procedure for treatment of the patient; and (b) Failing to acknowledge a written complaint and address the queries raised	Partially substantiated*
2002/2361	Being inconsiderate in permitting a male operating theatre assistance to be present throughout the complainant's operation and poor staff attitude of a female nurse	Unsubstantiated*
2002/2796	(a) Delay in replying to the complainant; (b) Mishandling his complaint; and (c) Impolite attitude of a nursing staff in a public hospital	Partially substantiated*
2003/0080	Maladministration of a hospital under HA, such that the complainant lost his chance of a liver transplant	Substantiated other than alleged*

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Housing Department

2002/1084	(a) Misleading the owners of an HOS estate on the division of management reserve fund between two owners' corporations; (b) Delay in handling division of the management fund; (c) Discourtesy to the owners' corporations; (d) Delay in arranging for renovation of the estate management office; and (e) Mishandling the delineation of boundaries between the two owners' corporations	Partially substantiated*
2002/3628 2003/0650	Shirking responsibility in the back-flow of sewage into the lift pit of an aided school on three occasions; and failing to follow up the blockage of public drainage to prevent recurrence of back-flow of sewage	Unsubstantiated*
2002/4464 2002/4465 2002/4466 2002/4467 2002/4468 2002/4469 2002/4470 2002/4471 2002/4472 2002/4493 2002/4494	Unreasonable policy and procedures for allocating public flats to interim house residents	Unsubstantiated
2002/4610	Ineffective supervision of a property services company which resulted in prolonged booking of venues in a public housing estate	Substantiated*
2003/0007	Failing to take action against unauthorised use of permanent building materials in the repairs of huts	Unsubstantiated
2003/1786	Delay in the investigation of a case of using a forged document to apply for public housing leading to prosecution being time-barred	Substantiated*
2003/1989	Delay in resolving persistent ceiling seepage problem	Substantiated*
2003/3238	Unfair treatment to the complainant whose unit was alleged to have caused persistent seepage problem downstairs	Unsubstantiated

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Judiciary

2002/2738	Providing the complainant with misleading information on bankruptcy of his ex-employer	Substantiated*
2003/2150	Misleading advice by a Bailiff regarding the enforcement of a court order	Incapable of determination

Labour Department

2002/2537	Mishandling a staff complaint case and failing to answer the complainant's questions, thus showing that the Department lacked an effective staff monitoring system and proper guidelines	Unsubstantiated

Land Registry

2002/3268	Shirking responsibility to update the complainant's correspondence address	Unsubstantiated

Lands Department

2002/0935	(a) Misinterpreting the original lease conditions of a site; and (b) Adopting without justification a higher plot ratio than allowed under the relevant outline zoning plan and the Mid-levels Administrative Moratorium	Substantiated other than alleged*
2003/0287	Allowing huts to be built on agricultural land	Unsubstantiated
2003/1718	Delay in processing an application for Livestock Keeping Licence for quails	Partially substantiated*
2003/2039	(a) Shirking responsibility when handling the complainant's enquiries and failing to give him a reasonable reply; and (b) Failing to attend properly to the issue of inadequate passenger facilities at a public pier	Partially substantiated*

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Legal Aid Department

2003/0744	Granting legal aid to the complainant that did not cover his needs	Partially substantiated
2003/1737	(a) Delay in registering a charging order nisi and replacing it with a charging order absolute; (b) Failing to deliver court documents by other alternatives; and (c) Putting incorrect information in the affirmation	Partially substantiated*

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Leisure and Cultural Services Department

2002/4088	(a) Delay in sending a notice to the complainant for the collection of reserved books from a public library; and (b) Poor attitude of a library staff attending to the complainant's enquiry	Unsubstantiated*
2003/2627	(a) Failing to take adequate action to eliminate safety hazards caused by branches of a tree outside the complainant's flat; and (b) "Buck-passing" between two departments in handling a complaint arising from (a) above	Unsubstantiated

Marine Department

2003/2451	Delay in investigation of a marine accident and perfunctory action	Substantiated*

Planning Department

2003/2832 2003/2834 2003/2836 2003/2838 2003/2842 2003/2844 2003/2848 2003/2856 2003/2858 2003/2860 2003/2864 2003/2868 2003/2874 2003/2876 2003/2882 2003/2884 2003/2886 2003/2890 2003/2894 2003/2900	Complaints by a number of residents at two private housing estates against EPD, Hy D, HAD, Lands D, Plan D and TD for changing the land use of a site in Tuen Mun to truck loading / unloading and storage without prior consultation with them, and that this would cause nuisance	Unsubstantiated

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Post Office

2003/0606	Delay in delivering a notice to the complainant for the collection of reserved books from a public library	Unsubstantiated

Social Welfare Department

2002/4371	Evasive attitude of staff members in handling a report on suspected fraud case of CSSA claims, and divulging personal data of the complainants	Unsubstantiated*

Transport Department

2003/2040	(a) Shirking responsibility when handling the complainant's enquiries and failing to give him a reasonable reply; and (b) Failing to attend properly to the issue of inadequate passenger facilities at a public pier	Partially substantiated*
2004/0199 2004/0202 2004/0205 2004/0208 2004/0211 2004/0214	Complaints by a number of residents at two private housing estates against EPD, Hy D, HAD, Lands D, Plan D and TD for changing the land use of a site in Tuen Mun to truck loading / unloading and storage without prior consultation with them, and that this would cause nuisance	Unsubstantiated

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Water Supplies Department

2002/2161	Failing to reply to a complaint and to send correspondence to the complainant's designated address	Partially substantiated*
2002/2733	Failing to allowing the complainant sufficient time for paying the water deposit when issuing her a notice of disconnection of water supply	Unsubstantiated*
2003/0641	Excessively high water charges and wrong investigation result provided by the Department	Partially substantiated
2003/2110	Failing to take immediate follow-up action on a leaking fire hydrant	Substantiated*

Summaries of Selected Cases Concluded by Full Investigation

AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT (AFCD)

Case No. OMB 2002/1163

AFCD – handling of lost dogs – dereliction of duty on the part of an Animal Management Centre, such that the complainant could not reclaim her lost dog before it was euthanised – substantiated

The complainant lost a three-legged dog in February 2002. She called an animal management centre (Centre A) under AFCD on 19 and 20 February to enquire, but the staff there said there was no record of such a dog. On 23 February, the complainant learned from a voluntary organisation that it had handed over a three-legged dog to Centre A on 17 February, but the dog had then been euthanised. The complainant thus went to Centre A to enquire again, but the staff insisted that there was no three-legged dog, nor any record of one. However, when the complainant called Centre A on 25 February, staff there confirmed that a three-legged dog had been euthanised on 22 February.

2. The complainant alleged that the staff at Centre A were derelict in their duty. As a result, she could not reclaim her pet dog before it was euthanised.

3. AFCD would normally fax details of animals reported lost to alert its four animal management centres (AMCs). Staff A at AFCD headquarters called Centre A upon receipt of the complainant's first call. However, the staff on duty there could not provide an answer. Staff A also sent a fax to all AMCs to enquire about the dog. Receipt of the fax document was recorded at two AMCs but not Centre A. In response to our inquiry, staff B (the only staff on duty at Centre A at that time) also claimed that he had not received any fax or telephone enquiry about a three-legged dog.

4. Towards the end of our investigation, AFCD provided records from its mobile telephone service company, which showed that staff A did call Centre A. The Department could not ascertain whether his call had been answered by a staff member other than staff B. In any case, that staff member neither followed up nor recorded the enquiry.

5. Regarding the complainant's second telephone enquiry on 20 February 2002, AFCD's first two replies, based on an investigation report by a staff C at Centre A, contained details of events which coincided with those given by the complainant, i.e. Centre A did receive the enquiry. However, in its third reply to us, the Department cited a "further investigation" report by staff C and denied receipt by Centre A of any telephone enquiry about a three-legged dog, saying that the first two replies were based only on information provided by the

complainant and had never been confirmed by staff at Centre A. After carefully examining the initial investigation report by staff C and, on balance of probability, we were satisfied that the complainant did call Centre A the second time. The staff answered her enquiry based on the information at hand and did not record the call as a reported loss.

6. AFCD provided us with contradictory information and overturned its earlier comments. Though there was no evidence that it had misled us intentionally, we had reservations over its careless attitude and practice. Moreover, the documents provided by AFCD and the voluntary organisation about the dog contained no description of it being three-legged. Their records were obviously too brief and rough.

7. On the other hand, had the dog been implanted with a microchip or carried some information on the owner, AFCD would have been able to trace its owner immediately and the outcome would have been different. The owner of the dog was, therefore, partly responsible for this incident.

8. Overall, this complaint was substantiated.

9. To avoid recurrence of a similar incident, AFCD had, in view of its insufficient internal communication, instructed its staff to note down the identity of the staff answering their calls. It had also issued clearer and more detailed guidelines on the handling of enquiries on lost dogs and AMC procedures for receiving and disposing of dogs. Meanwhile, it started using the Integrated Call Centre system, through which many reports of lost dog have been referred to the AMCs.

10. The Ombudsman recommended that AFCD send an apology to the complainant and take action to improve the checking of information on dogs submitted by voluntary organisations, handling reports on lost dogs, keeping of animal records by AMCs, supervision of staff performance as well as its system of handling and investigating complaints.

11. AFCD accepted the recommendations.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

Summaries of Selected Cases Concluded by Full Investigation

AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT (AFCD) AND EFFICIENCY UNIT (EU)

Case Nos. OMB 2002/3586
OMB 2003/0209

AFCD – animal collection service – (a) impropriety in collecting the dogs surrendered by the complainant; (b) excessive use of force in the process, strangling some of the dogs; and (c) providing the complainant with wrong information as to the time of euthanasia so that she lost the chance of reclaiming her dogs – partially substantiated

EU – handling of enquiry – Integrated Call Centre failing to handle the complainant's enquiry properly – unsubstantiated

The complainant requested AFCD to collect six dogs she wanted to surrender. She alleged that the Animal Management Team (the Team) did not bring enough cages so that one of the puppies had to be put into the same cage with a strange big dog and was bitten to death. Furthermore, the Team had used dog-catching poles to loop and lead away three puppies, cruelly strangling them.

2. Later, the complainant called the AFCD hotline several times and indicated her intention to reclaim the dogs, but was told that all her dogs had already been euthanised. She said that she had not signed any documents to authorise the Department to euthanise her dogs. Moreover, different AFCD staff gave her different answers as to the time of euthanasia. Their misleading information had cost her the chance of reclaiming her dogs.

Complaint (a)

3. AFCD pointed out that the Team had brought three large dog cages and a small one for the occasion. Two of the large cages had been occupied by two dogs collectedfrom elsewhere that day. After putting two of the dogs surrendered by the complainant into two empty cages, the Team suggested that they return with more cages the next day for her four remaining dogs. However, the complainant insisted that the six dogs be collected together. So, the Team put a puppy into the cage with a sick big dog and followed the complainant to her premises to collect the other three which had to be caged with other dogs.

4. The Department clarified that except for biter dogs, which must be segregated, there was no specific rule to put each dog in a separate cage. The Team leader claimed that he had kept an eye on the cages. There was no fighting among the dogs in the same cages and no puppy bitten to death.

5. Nevertheless, in view of the complainant's express request for collection of six dogs, we considered that the Team should have brought enough cages. Hence, they had not properly prepared themselves for the collection.

6. The Team leader stressed that he had explained to the complainant that her dogs would be euthanised and had asked her to sign the Authorisation of Animal Disposal form (Authorisation). However, claiming that she was not feeling well, she did not sign it. So they left with the dogs. AFCD considered this acceptable as the complainant, though agitated at the time, had given verbal consent to the Department to handle her dogs.

7. We considered that signed Authorisation to be required as it would avoid dispute and prove that the owner knew that the animals would be euthanised. It was improper and unwise of the Team to collect the complainant's dogs without her signing the Authorisation. Moreover, AFCD should formulate detailed guidelines on animal-collection procedures.

8. This complaint point was substantiated.

Complaint (b)

9. The Team leader stated that they did not use excessive force while leading the three puppies away with dog-catching poles, let alone strangled them.

10. Records in the AFCD Register for Surrendered Animals showed that the six dogs of the complainant were still healthy upon arrival at the Animal Management Centre. Before performing euthanasia, the veterinary officer did not find any of the dogs injured or dead. This complaint point was therefore unsubstantiated.

Complaint (c)

11. Next day, the complainant called the AFCD hotline and left a message. AFCD staff returned the call, learned that she wanted her dogs back and told her the dogs had already been euthanised that morning before she called. The complainant telephoned the hotline again several times and went to AFCD to enquire about her dogs on the following days. Two other AFCD staff told her that her dogs were euthanised in the afternoon of that day. She considered herself to have been misled by inaccurate information and thus failed to reclaim her dogs.

12. Our investigation confirmed the time of euthanasia to be in the morning after collection and before the complainant's first call. So, the two AFCD staff had indeed provided wrong information but this did not affect her chances of reclaiming her dogs.

13. This complaint point was partially substantiated.

14. The “AFCD hotline” was actually answered by staff of the Integrated Call Centre (ICC) of EU under the Government Secretariat. The complainant claimed that when she called the hotline the day after her dogs were collected, she had indicated her intention of reclaiming them. However, the request was not registered in the e-mail sent by ICC to the Department. She suspected that ICC had not handled her enquiry properly.

15. Information from EU and the tape of the telephone conversation showed that staff of ICC had accurately registered the complainant’s enquiry. There was no impropriety in their handling process. The complaint against EU was unsubstantiated.

General Observations

16. Overall, this complaint was partially substantiated.

17. AFCD issued a verbal warning to the staff who had conveyed the wrong message and apologised to the complainant both for improper collection procedures and for the conflicting information in reply to her enquiry. It had also issued new guidelines on animal collection procedures indicating that the Animal Management Team must get signed Authorisation from the owner of the animals. Meanwhile, the Animal Management Centre had acquired some collapsible dog cages for emergency needs.

This case highlights The Ombudsman’s role in ensuring that the public sector continues to improve quality and efficiency, and pointing out the facts when public officers are unjustly accused.

BUILDINGS DEPARTMENT (BD)

Case No. OMB 2003/0981

BD – advisory letters and removal orders – failing to issue advisory letters and removal orders concurrently on three items of unauthorised building works in the same property – partially substantiated

The complainant lodged a complaint alleging that between June one year and March the following year, BD had issued separate advisory letters and removal orders on three different items of unauthorised building works (UBW) in the same property. As a result, he could not arrange for concurrent demolition, resulting in a waste of his time and money. The

UBW were flower rack and canopies attached to the external wall, a rooftop structure and an outward swinging metal gate obstructing the means of escape.

2. BD explained that the three UBW came under the purview of three different sections of the Department : Existing Buildings Division (EB Division), Illegal Rooftop Structures Unit (IRS Unit) and Fire Safety Section (FS Section).

3. In May that year, FS Section issued advisory letters to all flat owners of the complainant's building advising them to "remove any UBW". In June, IRS Unit and EB Division by coordination issued an advisory letter to demolish the rooftop structure and an order to remove the UBW attached to the external wall. In November, FS Section issued an advisory letter on the complainant's outward swinging metal gate. Finally, IRS Unit issued a removal order on his rooftop structure in March the following year.

4. BD observed that the advisory letters and removal orders had been issued to the complainant about May and June that year. The sections concerned had followed the departmental instructions in handling the case. They had coordinated their actions to minimise the inconvenience to the complainant.

5. This Office considered that EB Division and IRS Unit had worked together in issuing their orders and advisory letters concurrently and that such coordinated efforts should be encouraged. However, FS Section had not issued its advisory letters at the same time and the contents of those letters were vague. As an enforcement agent, BD should try to assist owners to understand statutory requirements for compliance. BD should also minimise the nuisance to owners and avoid waste of their resources in ensuring public safety and protecting property.

6. The Ombudsman considered the complaint partially substantiated.

7. The Ombudsman made the following recommendations to BD –

(a) to formulate internal guidelines for clear instructions to the sections on coordinating the issue of advisory letters and orders concurrently to minimise nuisance to the public; and

(b) to give clear instructions to the parties concerned when issuing advisory letters on demolition of UBW.

8. BD implemented the above recommendations.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

Summaries of Selected Cases Concluded by Full Investigation

BUILDINGS DEPARTMENT (BD) AND ENVIRONMENTAL PROTECTION DEPARTMENT (EPD)

Case No. OMB 2003/2024
OMB 2003/2025

BD and EPD – removal orders and advisory notice on removal of asbestos-containing materials – failing to synchronise issue of removal orders and advisory notices on unauthorised building works in the same property – partially substantiated

The complainant lodged a complaint against BD and EPD for poor coordination in issuing orders and notices to remove unauthorized building works (UBWs) on her premises. She alleged that BD had issued a removal order against a flower rack on her premises in January, while EPD issued a notice regarding removal of a canopy containing asbestos on her premises in April of the same year. She would, therefore, have to incur additional expenses to remove the canopy as the scaffolding erected on the external wall of her premises for removal of the flower rack had already been taken down.

2. Both BD and EPD emphasised that their coordination in advising relevant property owners about the removal of asbestos-containing UBWs in blitz operations was good. Their arrangements enabled owners to know the legal requirements for removal of materials containing asbestos before they started to remove UBWs suspected to have such materials.

3. The subject premises was one of the target buildings for the blitz operation 2001 of BD. EPD surveyed those target buildings for the presence of UBWs containing asbestos. BD requested the complainant to remove only a flower rack on her premises. No action was required on the lightweight canopy since its dimensions and construction materials did not exceed the tolerable limit. However, as the canopy contained asbestos, EPD served to the complainant a notice conveying the requirements under the Air Pollution Control Ordinance, in case she demolished the canopy. The notice was advisory in nature and did not order removal of the canopy.

4. EPD had reminded the complainant of the said legal requirements twice before the notice, by attaching leaflets "Asbestos Removal of UBW" to BD's advisory letter and demolition order.

5. This Office considered that Government departments had a duty to assist and facilitate the public in complying with Government regulations or statutory requirements. In this case, even though the two departments were enforcing different legislation and had different concern over the canopy, the time lapse between BD's order and EPD's notice could have been

shorter if the two were better synchronised. EPD's notice, specifying the location of the asbestos, would help the complainant to decide on her removal plan only if served in time.

6. The Ombudsman considered the complaint partially substantiated.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

BUILDINGS DEPARTMENT (BD) AND LAND REGISTRY (LR)

Case Nos. OMB 2002/3267
OMB 2002/3268

BD – correspondence address – failing to update the complainant's correspondence address as requested – partially substantiated

LR – correspondence address – refusing to update the complainant's correspondence address – unsubstantiated

The complainant alleged that BD had failed to update his correspondence address as requested whilst LR refused to update it for him. He considered both departments shirking their responsibilities.

2. In 2000, BD sent two letters to the complainant for urgent removal of a canopy on the external wall of his premises. As the letters had been sent to his old address, he wrote to BD to request an update of his correspondence address. BD thus updated its records and sent its letters to the new address.

3. However, in 2002, when BD issued an order for removal of unauthorised building works (UBW) attached to his premises, the letter was again sent to his previous address. On his enquiry, BD staff told him that information on the owner had been provided by LR. He then called LR to request a change of his correspondence address but LR refused, stating that it was BD's responsibility to update the records.

4. BD explained that upon receipt of the complainant's request for updating his correspondence address, it was recorded in the file concerned. As the urgent removal of the canopy in 2000 and the order for removal of UBW in 2002 were on two separate files, handled by different units so that the officer who issued the latter order was not aware of the change of address. The Department regretted the inconvenience caused and reminded staff to check

whether individual owners had changed their correspondence addresses when handling old files.

5. In July 2002, BD implemented the Building Condition Information System (the system) on a trial basis. The information on owners provided by LR and the latest advised by owners had been input into the system. The Department would also check the records in the system before issuing any orders. BD has since updated the complainant's correspondence address in the system.

6. On the other hand, Land Registrar was not empowered by the Land Registration Ordinance to change, or even update, any information on the registration documents. To avoid similar complaints, LR held a meeting with other departments to remind them that owners' addresses in the registration documents might not be the most up-to-date. A remark to that effect would be added to the Reports-on-Title provided to various departments concerned and the registration date of the documents would also be indicated.

7. This Office considered that LR had executed its duties in accordance with the law and was not shirking responsibility.

8. In this light, the complaint against BD was partially substantiated and that against LR unsubstantiated. Overall, The Ombudsman considered the complaint partially substantiated.

Conclusion

9. The Ombudsman made the following recommendations to BD –

(a) to remind staff to update information in the system as supplied by owners as soon as possible and to explain to staff LR's responsibilities;

(b) to instruct staff to review the relevant files and the records in the system upon receipt of LR's Reports-on-Title to ensure the accuracy of the information, paying particular attention to the need for updating the information, or not, before issuing any order;

(c) to explore the feasibility of obtaining the owners' latest address through other channels; and

(d) to urge staff of different units to stay alert and those officers with related jobs should enhance their communication and coordination.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

Summaries of Selected Cases Concluded by Full Investigation

DEPARTMENT OF HEALTH (DH)

Case No. OMB 2003/0422

DH – chips allotment system – (a) being unfair in allotting chips at an out-patient clinic; (b) failing to set up criteria for issuing additional chips; and (c) failing to follow up a complaint properly – partially substantiated

The complainant was waiting in seat No. 35 for consultation at a general out-patient clinic under DH at 12:30 p.m. 38 consultation chips were to be allotted and distribution was to start at 2:30 p.m. However, when patient No. 33 was registered, the clinic staff informed those waiting in the queue that all the chips had been allotted.

2. The complainant tried to reason with the staff but learned that some patients queueing in front had taken more chips on behalf of others. This resulted in those waiting at the end of the queue not getting their chips. When she asked for issue of additional chips, she was assessed as not so seriously ill as to justify such request. Later, she complained to the nurse for the unfair allotment of chips but it was not properly followed up by the clinic.

Complaint (a)

3. Consultation chips were allotted on a "first come, first served" and "one person, one chip" principle, established by DH clinics. However, if a person could produce the identification documents of a sick relative and offer reasonable grounds for his failure to come and queue personally for the chip, that person would be given one more chip. The number of chips to be allotted each day would be displayed on the notice board in every clinic. Before the allotment started, the clinic staff would count the number of people queueing and the proxies. Those who would not have a chance would be alerted as soon as possible so that they might decide whether to continue waiting. The numbered seats in the clinic were meant only to facilitate orderly queueing and not to coincide with the number of the chips.

4. This Office considered that since a numbered queueing zone was designated in the clinic, the intention was surely to inform those waiting whether they could get a chip. However, as the Department permitted a person to take more than one chip, a person apparently within the zone would still have to wait until the actual distribution of chips before he would know if he could get one. Moreover, DH lacked a monitoring mechanism to prevent those arriving earlier from taking a consultation chip for a latecomer.

5. Complaint (a) was, therefore, substantiated.

Complaint (b)

6. Although the number of chips for distribution had been set, patients in urgent need failing to obtain a chip would have their conditions assessed by medical staff to decide whether an additional chip should be issued. In this particular case, the medical staff at the clinic had assessed the complainant's conditions following the established practice. This Office would not comment on this as it was a question of clinical and professional judgment.

7. Complaint (b) was, therefore, unsubstantiated.

Complaint (c)

8. In response to the complainant's request, a nurse and a doctor had met her to explain the principle of the allotment system and to advise to contact their Client Relations Unit for lodging a complaint.

9. As the medical staff had handled her request for an additional chip and her complaint properly, complaint (c) was unsubstantiated.

Conclusion

10. Overall, this complaint was partially substantiated.

11. Since 1 July 2003, Hospital Authority (HA) has taken over the general out-patient clinics under DH and continued the chips allotment system. DH and HA undertook to follow up The Ombudsman's recommendations as follows –

(a) to adhere strictly to the "one person, one chip" and "first come, first served" principle for the queueing system;

(b) to review the existing arrangements so that those who have arrived will be allotted chips before any remaining or additional chip is issued on individual request; and

(c) to implement the registration system prudently to prevent any improper transfer or resale of additional chips.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

Summaries of Selected Cases Concluded by Full Investigation

EDUCATION AND MANPOWER BUREAU (EMB) (formerly EDUCATION DEPARTMENT (ED))

Case No.OMB 2002/4649

ED/EMB – regulation of private schools – (a) delay and abuse of power in unreasonably rejecting school fee applications; (b) delay in processing applications for teaching permits; (c) attempt to upload the school's privileged information onto the ED website without proper authority; (d) failure to action against illegal schools; and (e) lack of consultation before introducing new regulatory measures – partially substantiated

The complainant was the principal of a tutorial school. In May 2001, ED approved applications from the school to collect fees for its courses by six instalments instead of the standard fee structure of 10 or 12 instalments stipulated in Regulation 62 (R62) of the Education Regulations. On 1 June 2001, the Education (Amendment) Ordinance 2001 (EAO 2001) came into effect and amended R62 so that the fee for a course shall be collected on an equal monthly basis. The then ED, therefore, required all schools to submit particulars of course fees for 2001 / 02 for approval and for issue of new Fees Certificates.

2. The complainant, responding to this requirement, applied for new Fees Certificates for both existing and new courses based entirely on the fees regimens approved in May 2001. ED turned down the applications for non-compliance with the new R62. The complainant felt aggrieved that ED had failed to explain the reason for not granting him exemption as in May 2001.

3. The complainant alleged that an ED officer, at a meeting in November 2001, had without authority offered a "grace period" for him to keep the existing fee structure for one year. He regarded the offer as inducement for him to give up the fees regimens already approved and abuse of power.

4. The complainant further alleged that ED took an unduly long time to process his applications for employing teachers from overseas. In one case, ED took almost a year to approve an application.

5. In May 2002, ED requested all private schools to provide information on facilities, faculties and insurance policies. Schools were told that part of the information would be uploaded to the ED website for public viewing. The complainant contested that ED had no statutory authority to publish such information without consent from schools and ED's omission to mention this was tantamount to deception.

6. The complainant also alleged that ED had failed to take enforcement action against illegal schools and to consult those in the trade properly prior to the introduction of EAO 2001.

7. Upon dissolution of ED in February 2003, EMB took up all its functions.

Complaint (a)

8. EMB explained that private schools had difficulty complying with the old R62 as students enrolled throughout the year and some courses were shorter than ten months. Moreover, closure of several private schools during the year 2000 / 01 had resulted in parents and students suffering loss of fees. The new R62, requiring schools to collect fees by equal instalments, safeguarded the interests of parents and students as well as providing flexibility to schools.

9. This Office considered that while EMB should not revoke the fees regimens approved in May 2001 for the existing courses, rejection of applications for new courses with fees regimens not compliant with the new R62 was legitimate and proper. However, ED should have explained to the complainant that the exemption granted in May 2001 was at the discretion of the Director of Education who, in view of the new R62, was not prepared to do so for new applications.

10. As for the alleged offer of a "grace period", EMB explained that it was only an exploratory proposal. This Office accepted EMB's explanation as reasonable. There was no evidence to support the allegation of abuse of power by the ED officer concerned.

11. On balance, this complaint point was partially substantiated.

Complaint (b)

12. EMB explained that the vetting of applications to register as Permitted Teachers involved verification of qualifications with the Civil Service Bureau and, depending on the origin of documents presented, the Bureau might need to consult the Hong Kong Council for Academic Accreditation. Such cases would, therefore, take longer to process.

13. Of the six cases quoted by the complainant, three required clarifications with the Council. There were two instances of minor slippage but this Office found no undue delay by ED / EMB in processing the applications. This Office accepted EMB's explanation that the minor slippage had been caused by considerable increase in caseload and reduction in manpower.

14. This complaint point was, therefore, unsubstantiated.

Complaint (c)

15. This Office noted that in the circular requesting school supervisors to provide information on their schools in accordance with Regulation 94 and section 39 of the Education Ordinance, ED had asked supervisors to sign on the return signifying their understanding of the uploading of information. This should adequately discharge ED of any intention to deceive school supervisors.

16. In this light, this complaint point was unsubstantiated.

Complaint (d)

17. Section 3 of the Education Ordinance defines a school as "an institution ...which provides for 20 or more persons during any one day or 8 or more persons at any one time, any nursery, kindergarten, primary, secondary or post secondary education...". In response to two complaints received in June and August 2002, one anonymous and the other from a member of the public, against a school operating without registration, the ED Central Compliance Team conducted site visits and found only three children on the premises in the first case and none in the second. ED could not, therefore, establish that a school was in operation.

18. As ED had followed up the two complaints, this complaint point was unsubstantiated.

Complaint (e)

19. EMB admitted that private schools had not been consulted prior to the introduction of Education (Amendment) Bill 2000 into the Legislative Council but it did consult the Board of Education and the Panel of Education of the Legislative Council. Furthermore, when the Bill was introduced, there was no organisation representing tutorial schools and it was not possible to consult them.

20. While this Office accepted there was practical difficulty for ED to consult each and every tutorial school, we considered that as an open and responsible department, ED could have consulted members in the relevant sector prior to finalising the Bill.

21. In this light, this complaint point was partially substantiated.

Conclusion and Recommendations

22. Overall, this complaint was partially substantiated.

23. EMB accepted our recommendations as follows –

(a) to make it clear and explicit to schools that the uploading of school information onto the EMB website is not mandatory and subject to their consent; and

(b) to ensure that affected parties / organisations are adequately consulted on any major legislative or policy change.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2003/0567

FEHD – staff attitude – (a) poor attitude of staff in carrying out his duties; and (b) improper handling of a staff complaint – partially substantiated

The complainant alleged that he had witnessed the rude manners of a member of FEHD staff towards a hawker in his enforcement action against road obstruction. When he tried to reason with that staff, he was also treated with rudeness and arrogance. That staff said if the complainant was dissatisfied, he could lodge a complaint. When the complainant telephoned FEHD Complaints Section, a female staff answered his call and asked him to describe the sequence of events and the behaviour of the staff. She added that the definition of impoliteness was open to interpretation. If he could not provide any substantive information, she would only note the complaint and not follow up. The complainant considered the enforcement staff's attitude poor and the female staff's improper as she had failed to ask for the number of the staff concerned and left it to the complainant to offer to provide the staff number. He, therefore, lodged a complaint with this Office.

Complaint (a)

2. On the complainant's claim that the FEHD staff's attitude was poor, there was no independent third-party witness. This Office was, therefore, unable to judge the manners of the staff at the material time. Hence, complaint (a) was unsubstantiated.

Complaint (b)

3. This Office noted that FEHD had issued two administrative circulars to staff : "Handling of Operations-related Complaints" and "Handling of Staff-related Complaints" instructing them on how to properly handle and follow up complaints. However, the two circulars failed to guide staff on how to handle a complaint from the public in the course of their duties.

4. As regards the complainant's allegation that he had telephoned the Department's Complaints Section that day, FEHD said that the number was that of a newspaper. The Department had no record of any such complaint, nor did any female staff answer any complaint by telephone. During our investigation, the complainant provided us with a statement of his mobile phone calls. It proved that the complainant had called on the morning in question and, on our inquiry, FEHD confirmed that the number dialed did belong to the Radio Communication Control Room of its Hawker Control Team Office. However, the Department still insisted that there was no record of that call while the three female staff on duty that day could not recall receiving the complainant's telephone complaint.

5. This Office believed the complainant had indeed telephoned the Department and a female staff had answered his call. However, she failed to record the call or report to her supervisor for follow-up action. FEHD had not provided appropriate guidelines for staff to follow up properly complaints arising in the course of their execution of duties. In this light, complaint (b) was substantiated.

6. Overall, The Ombudsman considered the complaint partially substantiated.

Conclusion

7. The Ombudsman made the following recommendations to FEHD –

(a) to revise and supplement the two circulars with guidelines for staff on how to handle complaints properly when confronted with complaints in the execution of their duties. The management should adopt effective measures to ensure that all telephone calls from the public would be properly recorded and processed; and

(b) to take effective measures for strict compliance of guidelines by frontline staff. They must not choose to omit recording complaints in order to ensure that all complaints would be actively pursued by the Department.

8. FEHD undertook to implement these recommendations as soon as possible.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.

Summaries of Selected Cases Concluded by Full Investigation

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2003/0664

FEHD – transfer of licence – (a) failing to notify the complainant at once after the application for transfer of food business licence was unilaterally withdrawn by the licensee; and (b) failing to handle her application documents properly so that her personal data might be divulged – substantiated

The complainant and the holder of a food business licence (licensee) applied together at an FEHD office for transfer of the licence. Health Inspector A (Inspector A) indicated that he would pass the application documents to Health Inspector B (Inspector B) upon his return from vacation leave, because the latter was responsible for the district where the food business was located. He also told the complainant to call Inspector B one month later to check progress of the application.

2. The licensee returned an hour later to cancel the application for licence transfer. Inspector A then tore up the documents, including the copies of identity cards, and threw them into his waste paper bin. A month or so later, the complainant's brother called to enquire about progress, only to learn that the application had been withdrawn. The complainant felt aggrieved and complained to Inspector A's supervisor. The supervisor apologised and added that with the documents destroyed, there was little chance of her personal data being divulged.

Complaint (a)

3. Inspector A did not follow departmental instructions to require the licensee to submit his withdrawal request in writing. Nor did he confirm this request with the complainant. As regards FEHD, before this incident, it only required the party requesting changes to write to the Department and the other party concerned. It did not instruct FEHD staff to ensure that the other party was made aware of the changes. This Office considered that as the application for transfer had been signed and submitted jointly by both parties, FEHD should ensure that the other party was also notified of any significant change (such as withdrawal of application). Thus, both FEHD and Inspector A should be held responsible.

4. This complaint point was substantiated.

Complaint (b)

5. FEHD indicated that staff should treat copies of identity cards as confidential documents in accordance with the Compliance Guide issued by the Office of the Privacy Commissioner for Personal Data (PCO). However, the FEHD Administrative Circular had no instruction on following the Compliance Guide issued by PCO or details about proper handling (e.g. retention and disposal) of documents containing personal data.

6. As Inspector A had simply torn up the application documents and casually thrown them into his waste paper bin, the complainant's concern about possible leak of her personal data was not unfounded. We did not accept FEHD's argument that Inspector A was inexperienced : he had been a Health Inspector for almost three years.

7. This complaint point was, therefore, substantiated.

Other Observations

8. FEHD's internal guidelines stated that for a straightforward application, notification of result should be issued within ten working days from receipt of application. Inspector A was overly cautious in advising that it would take one month to process the application. This was not in accordance with FEHD guidelines.

9. FEHD's Performance Pledge booklet did not cover application for licence transfer, so applicants had no idea how long the process of application would take.

Conclusion

10. Overall, the complaint was substantiated.

Comments from FEHD and Staff Concerned

11. FEHD had taken disciplinary action against Inspector A and issued new guidelines to remind staff to inform the other party when one party requested withdrawal of application for transfer. They should also file application documents properly and not destroy them without proper authorisation.

12. Inspector A admitted that he was at fault, but argued that the case was unfair to him as FEHD had not issued any specific instructions on how to process unilateral withdrawal of application for transfer of licence or how to handle documents containing personal data.

Moreover, it was stated in the application form that the party requesting any change must notify the other party involved. In this light, neither FEHD nor its staff should be responsible for notifying the complainant.

13. Both FEHD and Inspector A held that the processing time of one month as mentioned by Inspector A actually included the time for other administrative formalities after issue of the letter of approval. Inspector A was, therefore, not overly cautious.

Concluding Remarks and Recommendations

14. This Office considered that whilst Government departments could not formulate operational procedures to cover every possible scenario, staff should use their own judgement or consult their supervisors in special circumstances. In this case, when the licensee withdrew his application just one hour later and the other party was not present, the staff should have been more alert and handled the case with caution.

15. In principle, the new licensee should be able to start his business on receipt of the letter of approval of licence transfer. FEHD and Inspector A should not have taken into account the time for completing other administrative formalities.

16. Inspector A also argued that The Ombudsman should not pursue such a trivial complaint as possible leak of personal data. However, improper handling of documents resulting in leakage of such data could be an offence. This Office did not see this as a “trivial” matter.

17. The Ombudsman, therefore, maintained that the complaint was substantiated.

18. FEHD has apologised to the complainant in writing. It had agreed to incorporate new guidelines into its Operational Manual for Hygiene Services, add detailed instructions to its Administrative Circular on proper handling of documents containing personal data and include in its Performance Pledge booklet a performance pledge on handling applications for transfer of food business licences.

This case highlights The Ombudsman’s role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.

Annex 12

Summaries of Selected Cases Concluded by Full Investigation

GOVERNMENT PROPERTY AGENCY (GPA)

Case No. OMB 2002/3014

GPA – complaint handling – failing to secure the complainant's consent before referring his complaint to another party – substantiated

The complainant resided in a GPA-managed Disciplined Services Quarters, where there were four residents' associations set up respectively by four disciplined services. He alleged that a resident, assisted by the wife of the chairman (the Chairman) of one of the residents' associations, distributed in the quarters photocopies of newspaper cuttings that might be defamatory to him.

2. Consequently, he lodged a written complaint with GPA and requested that his letter be referred to the Quarters Team of the disciplined service concerned. GPA, besides complying with his request, copied the letter with his personal data to the Chairman. The complainant was dissatisfied that GPA should, without his consent, have referred his complaint to the husband of one of the persons involved.

3. GPA explained that the incident was basically a personal dispute. GPA thus hoped that the Chairman could help to mediate and resolve matters without too much fuss. Furthermore, the incident was already known to everyone there and the key target of complaint was a resident, not being the wife of the Chairman. GPA, therefore, sent a copy of the complaint to the Chairman without notifying the complainant or seeking his prior approval.

4. GPA added that as the incident involved the wife of the Chairman, the Quarters Team would have to contact the Chairman for information in the course of investigation. He would, therefore, sooner or later know about the complaint and guess the identity of the complainant. Besides, the complainant was himself the chairman of a residents' association set up by another disciplined service, his personal data were no secret to the Chairman.

5. Upon review, GPA admitted that it would have been much better had the complainant's consent been obtained before his complaint was copied to the Chairman.

6. This Office was of the view that in referring a complaint, GPA should have considered the rights and interests of the complainant and sought his prior approval. As the complaint involved the wife of the Chairman, there could be a conflict of interests to get him to mediate. It could even invite questions as to his fairness in handling the matter.

7. GPA was careless in copying the complaint with the complainant's personal data without his consent. It had failed to exercise due caution nor done its duty to protect the identity of the complainant.

8. The Ombudsman considered this complaint substantiated.

9. GPA had accepted the following recommendations by The Ombudsman –

(a) send a written apology to the complainant for its failure to obtain his consent before referring his complaint;

(b) formulate clear guidelines for staff to get written approval from the complainant before referring a complaint; and

(c) enhance the respect of its staff towards personal data and instruct them to follow the rules and guidelines strictly in handling referrals involving personal data.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.

HOME AFFAIRS DEPARTMENT (HAD)

Case No. OMB 2002/4452
OMB 2002/4473

HAD – ownership records – maladministration in assisting an owner to obtain the ownership records of an estate free of charge – substantiated

The complainants were the owners of units in a residential estate. In November 2002, they learned that HAD had assisted another owner to obtain the ownership records of the estate free of charge for the purpose of forming an owners' corporation (OC). However, HAD did not require verification of documents to prove that the owner concerned had the requisite support from other owners for forming an OC. On the other hand, for any other owner subsequently making a similar request, HAD would verify the information submitted before rendering assistance.

2. HAD explained that, according to internal guidelines, it would issue a certificate to the first owner making an application, to facilitate his obtaining the ownership records from the Land Registry free of charge, provided that he had secured 5% of the owners' shares in support. The owner had to sign an undertaking that the information would be used for OC

formation only, that he would observe the Personal Data (Privacy) Ordinance and that he would surrender those records to HAD upon request. HAD issued the certificate to the above owner upon his compliance with those guidelines.

3. However, if any other owner subsequently also secured 5% of the owners' shares in support of OC formation and approached HAD, the Department would then ask that owner to give a public notice of meeting by publication in local newspapers before offering him assistance to get the ownership records from the first owner.

4. According to the Building Management Ordinance, before forming an OC, an owners' meeting must be convened to appoint a management committee. An owners' meeting requires owners holding not less than 5% of the shares to act as "convenor". This requirement differs from that in HAD's internal guidelines, which required only the "support" of owners of not less than 5% of the shares. In this case, before issuing the certificate to the first owner, HAD had not checked whether there were indeed owners of not less than 5% of the shares willing to act as "convenor".

5. HAD was wrong to issue the certificate without verifying whether the first owner had obtained the number of shares claimed, and whether his supporters were really owners in the estate. HAD was also improper and unfair to treat any subsequent owner differently applying for free use of the records.

Conclusion and Recommendations

6. The Ombudsman considered this complaint substantiated.

7. This Office recommended that HAD –

(a) revise its internal guidelines on handling applications for the certificate to conform with the requirements of the Building Management Ordinance; and

(b) stipulate in the internal guidelines that staff must verify the information provided by applicants for the certificate.

8. HAD accepted our comments and recommendations.

This case highlights The Ombudsman's role in ensuring that wrongs are righted.

Summaries of Selected Cases Concluded by Full Investigation

HOME AFFAIRS DEPARTMENT (HAD)

Case No. OMB 2003/1782

HAD – voter registration – entering the complainant's name in the voter register of another village, so that he was disqualified from standing for the Village Representative election – substantiated

The complainant, an indigenous inhabitant of Village A, submitted a Village Representative (VR) election nomination form to a HAD District Office (DO) to stand for the Indigenous Village Representative election of his own village. However, DO rejected his nomination because his name was not in the voter register of Village A. The complainant then discovered, and complained, that HAD had entered his name in the voter register of Village B, thus disqualifying him from standing for election in Village A.

2. According to HAD records, the complainant had declared himself an indigenous inhabitant of Village B in his Application for Voter Registration. DO thus entered the relevant Village and Rural Committee codes in the form and HAD, his name in the Village B voter register.

3. The complainant subsequently requested HAD to amend the voter register to reinstate his eligibility for election in Village A. On Department of Justice (D of J) advice, HAD rejected his request as the problem was not due to clerical or printing errors.

4. This Office noticed that, while the complainant was at fault in writing down Village B as his address, he had on the other hand stated that his village was under the Rural Committee of Village A. Had DO staff been more alert and checked the details, this incident could have been avoided.

5. HAD argued that the final interpretation of the law should be left to a judge and D of J had advised against amending the voter register. This Office considered that a legal advice from D of J was not equivalent to a judge's interpretation of the law. The provisions of the Village Representative Election Ordinance would allow for rectification of incorrect name or address or other personal particulars. There was, therefore, inadequate basis for HAD's refusal to amend the final register to reinstate the complainant's eligibility for election.

Conclusion and Recommendations

6. In view of the above, this complaint was substantiated.

7. The Ombudsman recommended that HAD apologise to the complainant again in writing and instructed staff to be more careful in processing election-related documents. The Department accepted both recommendations.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

HOSPITAL AUTHORITY (HA)

Case No. OMB 2003/0080

HA – liver transplant – maladministration of a hospital under HA, such that the complainant lost his chance of a liver transplant – substantiated other than alleged

The complainant, a liver disease patient, was waitlisted for liver transplant at a hospital under HA for treatment. One day in September 2002, a doctor at the hospital telephoned the complainant at about 5 p.m., telling him to go to the hospital as soon as possible for operation because they had a healthy liver for transplant. The complainant went to the hospital at once and underwent a series of pre-operation tests. He was then kept waiting until after 10 p.m., only to be told that the operation had been cancelled due to certain resource problems at the hospital. Meanwhile, the liver graft had been sent to another hospital.

2. The complainant considered it extremely unfair that maladministration on the part of the hospital had deprived him of his chance for liver transplant.

Information Provided by HA and the Staff Concerned

3. HA explained that, as there was no telling when a liver might be available for transplant, the hospital could not possibly have all the necessary resources for the operation (e.g. surgery team, anaesthetists, perfusionists, operating theatre and intensive care unit) on standby at all times. Normally, when a liver became available, the hospital would initially identify a patient on the waiting list and notify him to come for pre-operation tests. Meanwhile, the Chief of Service in Surgery (C of S) would carry out a "comprehensive assessment" to determine whether a transplant could proceed. Due to budget constraints of HA and shortage of perfusionists in the hospital, C of S informed the liver transplant team that his prior approval was required before any transplant could proceed.

4. HA reiterated that potential organ recipient notified by the hospital should not assume that a transplant would automatically proceed before the comprehensive assessment was complete. In principle, only when all the necessary resources were available and the essential hospital services not affected could the operation be performed.

5. In the course of comprehensive assessment, the C of S at the hospital concerned was aware that two core members of the transplant team, including the patient's surgeon in-charge (Surgeon I/C), had not had enough rest after performing two very complicated operations (each taking more than ten hours) two days ago and on that very same day. Moreover, perfusionist support was not adequate that night. To proceed with the transplant would also mean the postponement of several scheduled surgical operations, including three for patients in critical condition. He, therefore, decided at around 7 p.m. that the operation should not proceed and informed the Surgeon I/C of his decision. The latter, however, did not concur with him.

6. Surgeon I/C further commented that while notifying the patient after the "comprehensive assessment" might assure him better of the operation, a liver graft could not be preserved for long and the potential recipient had to fast for at least six hours before the operation. Furthermore, if for some reasons, the patient identified was found unfit for the transplant, another patient would have to be found. Time would then be even tighter for all parties concerned. Hence, it was not improper to notify the patient for admission before the C of S finished his "comprehensive assessment" and gave his approval.

Observations and Opinions

7. Whether the members of the liver transplant team were mentally and physically ready to perform the operation and what kind of personnel would be required to provide technical support involve professional medical judgement and are matters outside the jurisdiction of The Ombudsman. In this light, we would not comment on the different views of Surgeon I/C and C of S on these issues.

8. On procedures, however, due consideration should be given to the actual circumstances in determining when a patient should be notified for admission into hospital. In this case, the points raised by Surgeon I/C (para. 6 above) were not unreasonable. However, while notifying the patient, the staff concerned ought to have alerted him that the transplant might not take place under certain circumstances (such as lack of support personnel) lest the patient be disappointed. We believe that neither Surgeon I/C nor other staff had put this point to the complainant that day.

9. The complainant was not told of C of S' decision not to proceed with the operation until around 10 p.m. that night (i.e. three hours after the decision). This Office noted that the delay was caused by disagreement between C of S and Surgeon I/C. They discussed the issue time and again while the complainant was left waiting for an extra three hours. Notwithstanding the good intention of Surgeon I/C in fighting for a transplant for his patient, the delay showed up a lack of effective mechanism for resolving differences of opinions and for reaching a consensus quickly for the benefit of a patient.

10. Liver transplant is an expensive and complex surgery, not funded by HA in the hospital concerned. Members of the liver transplant team knew that limited resources meant limited technical support, such as perfusionists, for such operations. As a liver transplant had just taken place two days before then, Surgeon I/C should have discussed with C of S the availability of resources beforehand. This would have been much fairer to the complainant and not give him false hopes.

Conclusions and Recommendations

11. Whether the operation should have proceeded or not involved clinical judgement. They were non-administrative matters and this Office was not in a position to comment. However, The Ombudsman considered that there was evidently insufficient coordination over liver transplant services in the hospital concerned and the incident fully exposed the internal conflicts.

12. Overall, this Office concluded that while the complaint point was not substantiated, there was indeed other matters of maladministration on the part of the hospital.

13. As HA had set up new arrangements regarding liver transplant service, The Ombudsman recommended that HA formulate clear guidelines, stating clearly who should make the decision as to whether an operation can proceed and in what circumstances a waitlisted patient should be notified for admission into hospital. HA should also instruct its staff to explain clearly to patients that an operation might not take place in some circumstances in order to avoid misunderstanding and unrealistic expectations.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

Summaries of Selected Cases Concluded by Full Investigation

HOUSING DEPARTMENT (HD)

Case No. OMB 2002/1084

HD – management fund account and management rights – (a) misleading some owners of an estate by stating that the management fund could be split in three months after the formation of their owners' corporation; (b) delaying the splitting of the management fund; (c) disrespecting the owners' corporation by directly sending individual owners two letters regarding estate management rights and management supervision fees; (d) delaying the fitting-out of the new management office; and (e) unnecessarily redefining the agreed boundary without consulting the two owners' corporations – partially substantiated

The complainant was the owners' corporation (OC) of a block in a Home Ownership Scheme (HOS) estate. The block was ready for occupation in 1992 and the other six blocks in the estate earlier, in 1987. The former, therefore, has a separate Deed of Mutual Covenant (DMC) from the latter. Consequently, the estate formed two separate OCs. The complainant came into being in July 1999, while the OC of the other six blocks was formed in June 2001.

2. In the early years, HD acted on behalf of the Hong Kong Housing Authority as the DMC manager of the estate. It kept the income and expenditure of all seven blocks in a single account. Upon formation of the two OCs, HD had to split the management fund between them and prepare for the handover of estate management to the OCs.

Complaint (a)

3. The complainant claimed that a staff member of HD's estate management office had misled some owners at a meeting in March 1999 that the splitting of the management fund would be completed in three months upon formation of their OC, without specifying that this was subject to the remaining six blocks forming their OC. As a result, the complainant made a wrong decision not to take over the management of the block while waiting for the splitting of the management fund.

4. This Office considered that the HD officer concerned had been unduly too optimistic about the timing of the splitting of the management fund. She had hastily answered the question put to her without elaborating any potential problems, thus giving rise to misunderstanding. However, she had no intention to mislead, and she did not cause the complainant to lose the opportunity of taking back the management of the block. This complaint point was, therefore, unsubstantiated.

Complaint (b)

5. Our investigation revealed that the major cause of the problem in splitting the management fund was that HD had kept the income and expenditure of all the blocks in one single account. Before the enactment of the Building Management Ordinance (BMO) in 1993 to encourage owners to form OCs, HD did not envisage the need for splitting the management fund later, so it kept only a single account. Such practice had, however, no legal basis. HD started to draft proposals for splitting the management fund only after the complainant's OC had been formed. The complainant did not accept any of HD's four proposals. It questioned their fairness and requested HD to provide all invoices and receipts for verification.

6. According to the BMO, the DMC manager shall permit any owner to inspect the books or records of account at any reasonable time. The complainant was, therefore, exercising its statutory right to inspect invoices and receipts for verification. Between February 2000, when the complainant raised the request, and March 2002, when it complained to this Office, HD had failed to provide the requested documents. In late 2001, after HD had sorted out the relevant records, it contracted out the splitting of the management fund to an independent accountant but did not give photocopies of the documents to the complainant. It further declined the complainant's request for photocopies on the ground that such action would hinder the work of the accountant.

7. As HD did not provide the invoices and receipts to the complainant and delayed responding to the complainant's legitimate request, it had failed in its duty as the DMC manager. This complaint point was, therefore, substantiated.

Complaint (c)

8. HD sent letters directly to individual owners in September 2000 and February 2001, to notify them of the Housing Authority's approval of the "Formation of Owners' Corporation – Five Year Rolling Plan" and its major implications. The letters urged the owners to incorporate themselves and take back the management of their block as soon as possible. They were standard letters that HD issued to all HOS flat owners. The complainant had taken the HD's action to be an act of disrespect. HD nevertheless apologised to the complainant for the misunderstanding caused. We accepted HD's explanation. This complaint point was, therefore, unsubstantiated.

Complaint (d)

9. The fitting-out of the new management office was delayed because the complainant had changed the design and floor plan several times. This complaint point was unsubstantiated.

Complaint (e)

10. Actually, HD did not redefine the boundary separating the two OCs. Its surveyor just enhanced the accuracy of the boundary on the survey plan to prevent any future disputes over the OCs' management and maintenance responsibilities. This complaint point was unsubstantiated.

Conclusion and Recommendations

11. Overall, the complaint was partially substantiated.

12. This Office recommended that HD –

(a) send a written apology to the complainant for delaying the provision of invoices and receipts;

(b) examine all other cases of HOS estates with more than one DMC and income and expenditure in a single account, and take remedial actions to split the account;

(c) formulate guidelines to ensure that frontline staff understand the procedures for forming OCs;

(d) seek help from professional staff of the Home Affairs Department (HAD) where necessary to provide services to flat owners; and

(e) make use of HAD's publications to introduce systematically to HOS flat owners the relevant legislation, the procedures for OC formation and taking over estate management.

13. HD has accepted and fully implemented the above recommendations.

This case highlights The Ombudsman's role in ensuring that wrongs are righted.

Annex 12

Summaries of Selected Cases Concluded by Full Investigation

HOUSING DEPARTMENT (HD)

Case No. OMB 2002/4610

HD – estate management – ineffective supervision of the property services company at a public housing estate, resulting in unfair allocation of public venues – substantiated

A community organisation (Organisation A) complained against HD for ineffective supervision of the property services company (PSC) at a public housing estate. As a result, the PSC unfairly allowed two local personalities to use several public venues in the estate for a prolonged period, thereby depriving other organisations of the use of those venues.

2. The PSC was appointed by HD in mid-2002 to manage the estate and one of its duties was to handle bookings of all open areas. In July 2002, two local personalities applied to the PSC for the use of five of the nine venues in the estate for conducting a residents' opinion survey over seven months. The PSC approved the application without consultation with HD.

3. Organisation A therefore complained to HD and the PSC. The PSC then advised the organisation to use other venues in the estate.

4. HD subsequently asked the PSC to draw up guidance notes on the booking of venues for distribution to local organisations. Henceforth, the PSC would only process applications submitted on or before a fixed day each month for use of venues in the following month.

5. Meanwhile, HD reached a consensus with the two local personalities that, if any other organisations applied for use of the venues in question, it would be settled by negotiation or drawing lots, subject to the conditions in the guidance notes being met.

6. HD observed that the PSC had not handled the case properly. It had not fully considered the needs of other people nor consulted HD before allowing the two local personalities to block-book more than half of the venues for seven consecutive months. We agreed with HD on this point.

7. HD maintained that it had never drawn up any guidelines governing the assessment of such booking applications. It regarded venue booking as part of the "daily routine" of estate management. PSCs should possess adequate general knowledge on estate management to ensure reasonable allocation of venues without HD's prior instructions. If HD issued guidelines on such matters, it would only hamper the full play of management expertise by the PSC.

8. This Office did not accept HD's explanation. Although estate management has been contracted out, HD still has the overall responsibility for ensuring that public resources are fairly and reasonably used. This Office considered that, for good management, HD should have formulated guidelines in advance for PSCs to process bookings of venue properly. In this respect, HD had failed to fulfill its supervisory function.

9. The Ombudsman, therefore, considered this complaint substantiated.

10. Having learned a lesson from this incident, HD issued guidelines to all PSCs, specifying the criteria and procedures for processing applications for venue booking.

11. This Office recommended that HD should regularly inspect all PSCs to ensure the implementation of such criteria and procedures. Furthermore, HD should apologise to the complainant.

12. HD accepted our recommendations.

This case highlights The Ombudsman's role in ensuring that wrongs are righted.

HOUSING DEPARTMENT (HD)

Case No. OMB 2003/1786

HD – time limit for prosecution – delay in processing a report on the use of a forged document to apply for public housing, resulting in the case being time-barred from prosecution – substantiated

The complainant reported to HD in June 2001 that an ex-employee had forged an employer's certificate to apply for public housing. In the event, delay by HD staff caused the case to be time-barred from prosecution.

2. According to the Housing Ordinance, proceedings against an offence of giving a false statement when applying for a public housing may be brought at any time within six years after commission of the offence or within one year after discovery thereof by an authorised officer, whichever period expires first.

3. Upon receipt of a report of such an offence, the Housing Manager / Prosecutions of HD would first confirm the discovery date of the offence and determine the statutory time-barred date (STBD) as stipulated in the Ordinance. An Assistant Housing Manager /

Prosecutions would check the STBD and then pass the case to a Housing Officer for processing chronologically in accordance with STBDs. The Housing Officer should start screening cases at least four months before their STBDs, completing scrutiny with recommendations preferably one month before. This would allow time for senior officers to decide whether or not to prosecute.

4. In this particular case, HD's Applications Section received the report on forged document on 13 June 2001. However, the Assistant Housing Manager, who happened to be also Acting Housing Manager / Prosecutions, mistook 17 July 2001 as the discovery date. The STBD thus fell on 16 July 2002 instead of 12 June 2002. It was not checked by another officer.

5. When the Housing Officer started processing the case on 25 March 2002, it was just under four months from the July STBD. She reported the case to her new supervisor on 11 July 2002 and recommended prosecution. It was just five days before the STBD, not the preferred minimum of one month.

6. Her supervisor then found that the STBD should actually fall on 12 June 2002. In this light, prosecution was time-barred.

Conclusion and Recommendations

7. HD's mistake was due to –

(a) wrong setting of the STBD;

(b) failure in checking the STBD;

(c) late submission of the case for prosecution; and

(d) inadequacy in monitoring of cases for timely submission.

8. This Office considered the complaint substantiated.

9. The Ombudsman recommended that HD –

(a) issue an apology to the complainant;

(b) consider action on the officers concerned;

(c) review procedures for timely processing of cases;

(d) give firm and clear guidelines to staff; and

(e) review all time-barred cases to identify any officer accountable and other systemic improvement measures necessary.

10. HD accepted our findings and recommendations.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency.

HOUSING DEPARTMENT (HD)

Case Nos. OMB 2003/1989
OMB 2003/3238

HD – water seepage – (a) delay in resolving ceiling seepage problem – substantiated; and (b) unfair treatment to the tenant whose unit was alleged to have caused the seepage – unsubstantiated

Two public housing tenants complained separately against HD for mishandling the same case of ceiling seepage. The tenant downstairs first reported to HD on her ceiling seepage in 1996 and then in 1999. Although HD had carried out repairs many times in the unit, the problem persisted. HD staff thus considered that the seepage probably originated from the unit upstairs.

2. To arrange for inspection and repairs in the unit upstairs, HD had time and again telephoned and written to the tenant upstairs and sent staff to visit the unit but all in vain. The tenant upstairs evaded contact with HD staff and used various excuses to deny them entry.

3. The Tenancy Agreement stated that a tenant should permit HD at all reasonable times to enter and do any repairs for which the Department as Landlord was liable. However, the tenant upstairs took no notice of HD's advice and warnings.

4. On 1 August 2003, HD implemented the Marking Scheme for Tenancy Enforcement (Marking Scheme) whereby tenants who "deny HD staff or staff representing the HD entry for repairs responsible by the HD" should be allotted seven points as warning. HD invoked this rule and urged the tenant upstairs to cooperate. As she repeatedly ignored HD's warning letters, the Department allotted her a total of 14 points. Under the Marking Scheme, a tenancy would be terminated when allotted 16 points.

Complaint by Tenant Downstairs

5. During the four years handling the case, HD had issued a total of 61 letters (including eight warning letters) to the tenant upstairs. However, the letters were repetitive in contents, reiterating only the terms of tenancy without indicating any substantive action to be taken. They had no deterrent effect on the tenant upstairs. HD had also failed to exercise its authority under the Tenancy Agreement to secure cooperation from the tenant upstairs and had not actively considered issuing a Notice to Quit in accordance with the terms of tenancy. Consequently, the tenant downstairs had to suffer the nuisance from the seepage year after year.

6. The Ombudsman, therefore, considered the complaint by the tenant downstairs substantiated.

Complaint by Tenant Upstairs

7. The tenant upstairs claimed to have allowed HD technicians to carry out works in her unit "many times". However, this Office noted that HD had only carried out a seepage test in the unit and repaired the drain outlet of the toilet. While HD sought the tenant's cooperation time and again, HD staff were repeatedly denied access on various excuses. It was obvious that the tenant had no intention whatsoever to cooperate.

8. HD was willing to repair any damage to the bathtub caused by previous works and arrange a transfer of unit for health reasons. Nevertheless, the tenant refused to produce a medical certificate. This Office considered that the tenant had no grounds for constantly refusing to cooperate with the Department.

9. The tenant upstairs had clearly not complied with the Tenancy Agreement. As for HD allotting points under the Marking Scheme as warning, it was only the tenant's own doing.

10. In view of the above, The Ombudsman considered the complaint by the tenant upstairs unsubstantiated.

Recommendations

11. HD accepted the following recommendations by The Ombudsman –

(a) to send a written apology to the tenant downstairs;

(b) to take decisive actions (e.g. strict enforcement of the Marking Scheme or termination of tenancy) to solve the problem effectively if the tenant upstairs continued to be uncooperative; and

(c) to expeditiously arrange transfer for the tenant downstairs if desired.

These two cases highlight The Ombudsman's role in ensuring that wrongs are righted and facts are pointed out when public officers are unjustly accused.

HOUSING DEPARTMENT (HD) AND ARCHITECTURAL SERVICES DEPARTMENT (Arch SD)

Case Nos. OMB 2002/3628
OMB 2003/0649
OMB 2003/0650

HD - maintenance responsibility – (a) shirking responsibility for coping with the back-flow of sewage into the lift pit of a school and failing to follow up the blockage of public drainage to prevent recurrence of such sewage back-flow – unsubstantiated

Arch SD – emergency repairs – (b) failing to provide appropriate services to the school regarding the sewage back-flow incidents – substantiated

The complainant, an aided school, was situated within a Home Ownership Scheme (HOS) estate, the Owners' Corporation of which had yet to be formed. HD, as the agent of the Hong Kong Housing Authority (HA) to execute the Deed of Mutual Covenant, was responsible for supervising the estate management company's day-to-day performance. According to the contract, the management company was required to inspect the public drainage in the estate once a month and to carry out dredging or maintenance as necessary. However, the responsibility of maintaining the school premises had been entrusted by the Education and Manpower Bureau (EMB) to Arch SD. In accordance with EMB's guidelines, for emergency repairs, the school should fax an application to Arch SD direct with a copy to EMB. Upon receipt of such application, Arch SD staff would visit the school for investigation. Should the repair cost less than $3,000, the school would have to arrange and pay for the works. Nevertheless, Arch SD was responsible for providing professional assessment and technical advice.

Summaries of Selected Cases Concluded by Full Investigation

Complaint (a)

2. On 19 March 2002, back-flow of sewage into the school's lift pit occurred for the first time and caused damage to the lift. This was due to blockage of a public drain in the estate. The school notified Arch SD. Later, on learning that the drain was under HD management, the school sought compensation from HD for repair of the lift. HD immediately directed the management company to check the drain and to refer the school's claim to HA's insurance company. In October 2002, the notary public appointed by the insurance company explained to the school that since the blockage had been caused by reckless disposal of construction waste by tenants or workers, the insurance company would not pay for the repair. Nevertheless, to prevent recurrence, HD instructed the management company to step up inspection of the public drainage to twice a month and to post notices in the building lobbies and distribute leaflets to residents on the proper use of drains.

3. On 27 and 29 January 2003, similar incidents occurred in the school, which notified Arch SD and HD immediately. The management company promptly arranged dredging and cleaning up. It further issued notices to remind residents to use the drains properly.

4. We found that HD had actively followed up all three incidents of back-flow and had not shirked its responsibility.

5. This complaint point was, therefore, unsubstantiated.

Complaint (b)

6. An Arch SD officer visited the site the next day after the first incident and found the blockage in the public drain had been cleared by the Drainage Services Department. As the trapped effluent had subsided, he closed the case.

7. We found no specific instructions in Arch SD's guidelines or performance pledge to advise its staff on how to handle applications from aided schools for repairs. Though having received the school's application (dated 27 January 2003) on 28 January, Arch SD staff did not go to the school for investigation or seek a better understanding of the situation. When the subject officer received the school's call for help on the morning of 29 January, he still refused to visit the school until urged by HD and his supervisor. This Office considered the officer's service attitude passive and lacking in enthusiasm.

8. The school asked Arch SD several times for advice on a permanent solution to the problem. The Arch SD officer suggested that the school should block the drainage outlet at the bottom of the lift pit. However, he added that he was not sure whether such blockage

would violate any regulations and that it could only be an interim measure. He also refused to carry out the works for the school because it cost less than $3,000. After three months and on HD's recommendation, Arch SD finally agreed to block the outlet in question. This Office considered the "professional advice" given to the school by the Arch SD officer vague and perfunctory.

9. In view of the above, this complaint point was substantiated.

Conclusion

10. Overall, the complaint was partially substantiated.

11. The Ombudsman recommended that –

(a) HD consider adopting more effective measures to inspect the drainage for timely detection of blockage;

(b) HD refer the school's claim to HOS estate owners' public liability insurance company instead of HA's insurer;

(c) Arch SD review and revise its guidelines in order that both its staff and schools would understand better how to provide and obtain the Department's assessment of repair services and professional advice;

(d) Arch SD apologise to the school; and

(e) EMB take part in Arch SD's review of guidelines.

12. The three departments accepted our recommendations for implementation by phases.

This case highlights The Ombudsman's role in ensuring administrative fairness, that the public sector continues to improve quality and efficiency and that wrongs are righted.

Annex 12

Summaries of Selected Cases Concluded by Full Investigation

LANDS DEPARTMENT (Lands D)

Case No. OMB 2002/0935

Lands D – lease modification – allowing a site to be excessively redeveloped due to: (a) misinterpreting the original lease conditions; and (b) adopting without justification a higher plot ratio than allowed under the relevant outline zoning plan and the Mid-Levels Administrative Moratorium – substantiated other than alleged

Restrictions on Redevelopment

The redevelopment potential of the subject site in the Mid-Levels was determined by: (i) the lease; (ii) Building (Planning) Regulations; and (iii) the outline zoning plan (OZP). The Mid-Levels Administrative Moratorium (the Moratorium) is an administrative measure intended to ease traffic congestion in the Mid-Levels by restricting the intensity of building development and redevelopment.

Complaint (a)

2. The subject site was part of a lot which originally contained one main residence and two outhouses. The lot was subsequently divided into two portions sharing a common lease that allowed a total of three houses, each to be not more than 35 feet in height. The owner of each portion took one outhouse and half of the main residence. One of the portions became the subject site.

3. In 1960-61, the owner of the other portion (the adjacent site) redeveloped her half of the main residence and the outhouse into a residential block and a garage with accommodation for drivers.

4. The complainant believed that Lands D had incorrectly and / or improperly determined that the adjacent site had only one house on it, thus allowing **two** houses to be redeveloped on the subject site, with consequent increase in the permitted plot ratio.

5. We found that while Lands D had always tried to abide by the restriction for “three houses” in the lease, it had displayed inconsistency and uncertainty over how to count the number of houses on the adjacent site. This was due to changes and ambiguity in Lands D’s operational definition of “house” and rationalised by the current definition, adopted in October 1999. According to the latter, the adjacent site contained two houses, while in November 1999, Lands D approved a redevelopment proposal for the subject site consisting of only **one** house, up to ten storeys high over carports.

Complaint (b)

6. According to the Building (Planning) Regulations, the plot ratio of the subject site for a building under 15 metres in height is 3.3. The maximum permitted height for a building on the site, as determined by the OZP, is ten storeys above carports or the height of the existing buildings, whichever is the greater. Since the original lease imposed a height limit of 35 feet on any house erected on the subject site, Lands D's approval of a lease modification was necessary to build up to the height allowed under the OZP.

7. Lands D determined the scale of redevelopment permissible on the subject site by way of a "notional scheme" submitted by a developer, i.e. hypothetical designs to determine the extent of (re)development permitted within the limit of the lease before proceeding further with design and submission of building plans. Having obtained approval for the notional scheme, the developer then applied to Lands D for a lease modification to "stretch" the same gross floor area to fit into a high-rise building. In this regard, Lands D treats any storey containing carparking spaces as "carport" and grants exemption for machine rooms, recreational facilities and lobby.

8. While the proposal appeared *prima facie* to represent more intensive redevelopment in contravention of the principle of the Moratorium, Lands D pointed out that the Moratorium was only an administrative measure with no restrictive effect on existing property rights. Such rights were further taken to mean the maximum plot ratio (i.e. 3.3) and gross floor area permitted on the site before redevelopment. "More intensive development" was thus measured against the notional scheme, not any pre-existing building.

Other Observations

9. Having regard to the above, neither complaint point was substantiated. However, our investigation had identified areas of concern in a number of Lands D's procedures and practices constituting maladministration (justifying a future direct investigation) –

(a) the ability to define key terms flexibly such as "house" and "more intensive development" allowed Lands D to determine and shape policy, which we considered inappropriate and inconsistent. Some of such definitions appeared to defy logic and common sense. They gave the impression that Lands D was serving property owners and developers, rather than protecting the interests of the community as a whole; and

(b) there was a lack of consistency and logic in the way Lands D conducted its meetings. Decisions appeared to be arbitrary, while their lack of transparency ran counter to the spirit of open and accountable government.

10. The Ombudsman, therefore, considered the case substantiated other than alleged.

This case highlights The Ombudsman's role in ensuring administrative fairness.

LEGAL AID DEPARTMENT (LAD)

Case No. OMB 2003/1737

LAD – legal aid – (a) delay in registering a charging order nisi and replacing it with a charging order absolute; (b) failing to deliver court documents by other alternatives; and (c) putting incorrect information in the affirmation – partially substantiated

The complainant, representing a deceased Madam A, lodged a complaint against LAD. Allegedly, Madam A had been granted legal aid to enforce a maintenance order. In early May 2002, the judge accepted LAD's application on her behalf and granted a charging order nisi so that she could register a charge against the property of her ex-husband (the respondent) in the Land Registry. However, LAD had been withholding her application for a hearing on replacing the charging order nisi with a charging order absolute.

2. In early May 2003 (i.e. one year later) LAD staff went to the registration office of the Court to enquire and submitted a draft charging order nisi for Court approval. In mid-May, the Court issued a sealed charging order nisi and set down the date of hearing. Meanwhile, LAD staff registered the charging order with the Land Registry and tried to deliver the court documents to the respondent on 19 and 23 May, but to no avail. When the Department learned that Madam A had passed away on 12 May, it stopped further attempts to deliver the documents to the respondent because, without her instructions, LAD could not continue the proceedings.

3. On 31 May 2003, LAD sent the relevant documents to the legal representative of the executor of Madam A's will including an affirmation bearing "2 June" as the date it was filed. The complainant considered this date misleading. In fact, the affirmation had been dated in advance and for filing to the Court that day.

4. As the Court had granted the charging order nisi in May 2002 and LAD did not submit the draft order to the Court for approval until one year later, this Office considered LAD to be at fault in omission or in delay.

5. However, since LAD could no longer represent Madam A, it was appropriate for it not to deliver the Court documents to the respondent. Lastly, it was not improper to date the affirmation in advance as it was scheduled for filing to the Court on 2 June.

6. In conclusion, the complaint point against LAD for omission and delay in processing the application for replacing the charging order was substantiated but the other points were unsubstantiated. Overall, the complaint was partially substantiated.

7. LAD had accepted our recommendations and indicated that with the upgrading and enhancement of its computer system in mid-2003, all draft orders for Court approval had been systematically recorded and would be duly brought up to avoid omission. Meanwhile, LAD had started to revise the details of its existing guidelines to provide more effective instructions to staff in future and ensure that all necessary procedures would be followed properly.

This case highlights The Ombudsman's role in ensuring that wrongs are righted.

LEISURE AND CULTURAL SERVICES DEPARTMENT (LCSD) AND POST OFFICE (PO)

Case Nos. OMB 2002/4088
OMB 2003/0606

LCSD and PO – despatch of notice – (a) delaying despatch of collection notice from a public library – unsubstantiated

LCSD – staff attitude – (b) being impolite in handling enquiry – unsubstantiated

The complainant requested a public library book through the LCSD "Reservation of Library Materials" service but she only received the collection notice in the evening of the collection deadline. She was, therefore, unable to collect the reserved book in time and went to the library for clarification the next day. While the librarian was politely discussing a possible solution with her, a staff member nearby rudely accused the complainant of delaying the collection of the book on purpose and refusing to pay the reservation fee.

Complaint (a)

2. On receiving an application for "Reservation of Library Materials", LCSD staff would hold the requested material and send a notice to inform the reader to collect it within a specified period. Before issuing the notice, the staff would impress the postage and date-stamp on the envelope and despatch it to the designated post office on the same day for delivery.

3. The computer records of LCSD and the date-stamp impressed on the notice showed that the Department had despatched it to the designated post office 12 days before the collection deadline.

4. According to PO, the notice was returned for re-delivery one day before the collection deadline. Since there was no indication of the reason for return of the notice, PO could not ascertain why there was delay in delivery.

5. This Office considered complaint (a) unsubstantiated.

Complaint (b)

6. According to the other library staff on duty on the day of the incident, the complainant asked how the matter could be resolved because the notice was late. The staff concerned raised her voice and insisted that the complainant had to pay the fee whether she had picked up her item or not.

7. LCSD's guidelines stipulated that a fee of $2.50 would be charged for the reservation of each item of library material and the fee was payable once the requested item was available for collection. Under special circumstances, including any loss incurred as a result of the negligence of other parties, LCSD staff could consider waiving the fee upon the supervisor's approval in accordance with internal guidelines. In this case, the staff concerned was inflexible and failed to observe that LCSD might exercise discretion to waive the fee. Nevertheless, we believed that she did not intend to be rude to the complainant but was just speaking rather loudly.

8. Complaint (b) was, therefore, unsubstantiated.

9. The Ombudsman recommended that LCSD confirm with readers the accuracy of their mailing addresses. This Office noted that the complainant had praised the duty librarian in her letter for her positive attitude and flexibility in handling the matter. We, therefore, suggested that LCSD should commend that librarian. LCSD accepted and implemented all our recommendations.

Annex 12

Summaries of Selected Cases Concluded by Full Investigation

This case highlights The Ombudsman's role in ensuring bureaucratic constraints do not interfere with administrative fairness and the public sector continues to improve quality and efficiency.

MARINE DEPARTMENT (MD)

Case No. OMB 2003/2451

MD – marine accident – delay in investigation of an accident and perfunctory action – substantiated

The complainant went diving in Hong Kong waters in May 2003. While emerging from the water, she was hit by a speedboat. She was taken to hospital by friends, was consequently hospitalised for over 40 days and went through two orthopaedic surgeries. After analysing the relevant facts, a Marine Office (MO) recommended not to prosecute the master of the speedboat for insufficient evidence.

2. The file was then forwarded to the Marine Accident Investigation Section (MAI) of MD for further analysis and assessment. Nevertheless, MAI neither recorded receipt of the file nor passed it to an investigation officer for action. When the complainant called to enquire about her case in August, MAI responded that it had never received the file and was not aware of her accident. The complainant thus wrote to MD that day to complain about the incompetence and attitude of its staff. MAI apologised in its reply for the mistake in saying that it had never received the file and indicated that it supported MO's recommendation not to prosecute. Aggrieved, the complainant wrote to MD again to complain. However, the Department only reiterated the reasons for its investigation result.

3. In the guidelines issued by MD to frontline teams, marine accidents were categorised into "major accidents" and "non-major accidents". Accidents in the former category would be referred to MAI for immediate action and the latter taken up by a frontline team to assess their causes. However, the guidelines issued to MAI grouped marine accidents into four categories: namely, "very serious accidents", "serious accidents", "less serious accidents" and "other accidents". The first three categories were within MAI's purview for investigation.

4. MD admitted that its frontline teams in general were not conversant with the criteria set out in the guidelines regarding the definition of a "serious injury" (i.e. the victim suffering at least 72 hours of incapacitation within seven days after sustaining an injury). In this incident,

the MO officer had failed to look personally into the injury of the complainant. He concluded that she had not sustained a "serious injury" solely on information given by her friend. As a result, he did not classify the accident as "major". In fact, the complainant's injury should have been considered "serious". MO ought to have passed her case to MAI at once for action as a "major accident".

5. MD further explained that the workload of MAI had been particularly heavy during that period, so cases of a "less serious nature" had been put aside. This resulted in the file not being passed to an investigation officer.

Conclusion and Recommendations

6. We considered the accident to have been classified incorrectly by MO because of inadequate understanding of the definition of "serious injury" and because MD had not provided frontline staff with sufficient details. Consequently, they had to rely on their own subjective judgment in determining whether an accident was "major". Moreover, MD had issued different guidelines to frontline teams and to MAI. This would lead to different interpretation as to the seriousness of an accident and hence different treatment of a case. The Department also had not given staff any instructions on the confirmation and recording of injuries. No space was provided in the "Report of Marine Accident" form for a victim's account of his injury. As for heavy workload, MD could have redeployed staff instead of putting files aside unattended.

7. In view of the above, this complaint was substantiated.

8. The Ombudsman recommended that MD –

(a) send a written apology to the complainant;

(b) review its guidelines on classifying the seriousness of injuries and accidents;

(c) give staff clearer instructions on the confirmation and recording of injuries;

(d) add a new "injury report" section in the form; and

(e) take measures to ensure files received are properly dated and recorded by MAI, and passed to investigation officers quickly for action.

9. MD accepted all our recommendations and undertook to implement them by phases.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.

Summaries of Selected Cases Concluded by Full Investigation

SOCIAL WELFARE DEPARTMENT (SWD)

Case No. OMB 2002/4371

SWD – handling of offence reports – (a) evasive attitude of staff in handling the complainants' report on suspected fraud in Comprehensive Social Security Assistance claims; and (b) divulging to the suspected offender that the complainants had reported the case to the Department – unsubstantiated

The complainants, a married couple, had leased their flat to Mr. A. In December 2002, they found a letter sent by SWD Social Security Field Unit (SSFU) to their flat about Comprehensive Social Security Assistance (CSSA). However, the addressee Mr. B was not their tenant. They called the SSFU and an officer there confirmed that the mailing address was correct. Suspecting that Mr. B might have used the address to make fraudulent claims for CSSA, the complainants followed the SSFU officer's suggestion and called the special hotline (hotline) for the SWD Fraud Investigation Team (FIT).

2. The hotline operator allegedly did not take down details of the complainants' report, and only advised them to report in person, with documents such as the tenancy agreement, to the SSFU. Next morning, they went to the SSFU, but the officer was evasive and told them to call the hotline directly since it would take longer to refer their report to FIT. Later, the officer's supervisor showed them the tenancy agreements and rental receipts submitted by Mr. A and Mr. B, which caused the complainants to suspect that they were both making fraudulent claims for CSSA. However, the supervisor also suggested that they report to FIT directly if they wanted prompt action.

3. That afternoon and next morning, the complainants received calls from Mr. A and his girl friend, telling them to mind their own business. The complainants, therefore, suspected that SWD staff had disclosed to Mr. A their reporting the case to the Department.

Complaint (a)

4. The SSFU officer and her supervisor denied that they had been evasive or had suggested the complainants to report to FIT directly. The officer claimed that she had provided the complainants with information about the hotline only because they had asked about the ways of making a report. Her supervisor added that he had in fact promised the complainants to follow up their report.

5. We considered that there was insufficient evidence to prove that the SSFU officer and her supervisor had been evasive in handling the complainants' report. As for the hotline operator, our inquiry confirmed that she had recorded the details reported by the complainants. This complaint point was, therefore, unsubstantiated.

Complaint (b)

6. All SSFU and hotline staff concerned denied contact with Mr. A on those two days. The SSFU officer further stated that she had not entered the details provided by the complainants into the CSSA computer system until a few days later, so it was not possible for other SWD staff to access the information before then.

7. SWD had instructed all staff to keep details of reports confidential. For staff members who accessed the computer system, their identity and operation would be recorded. Moreover, the personal data of informants and details of cases were kept in separate files by FIT.

8. As we could not tell how Mr. A had learned of the complainants' report to SWD, it would be improper for us to pass judgment.

Conclusion and Recommendations

9. Overall, this complaint was unsubstantiated.

10. SWD did not adopt a "one-stop" approach in receiving reports from the public nor did it instruct staff to explain to the public that repeated reporting through different channels was unnecessary. In this particular case, the SSFU officer had twice given the complainants the hotline number and information on FIT, so that they misunderstood that she was giving them the run-around and was unwilling to take up their case. The case also exposed the lack of mechanism for notification between SSFUs and FIT. Consequently, they would not know whether a report had already been made to the other party or which party should follow up the case. In addition, SSFUs did not have security measures in place, similar to those of FIT, to prevent leakage of informants' personal data.

11. The Ombudsman, in addition to recommendations relating to the "one-stop" approach, suggested that SWD should produce special forms for use in SSFUs for reporting; provide informants with case numbers; consider assigning SSFUs to conduct "preliminary investigation" into all cases in view of their prior knowledge of case background; and set performance pledges for different stages of investigation of reports.

12. SWD accepted most of our recommendations. It has formulated new guidelines for staff, instructing them to explain to informants that there is no need for repeated reporting through different channels. Meanwhile, all SSFUs have adopted security measures, similar to those of FIT, to avoid divulgence of informants' personal data.

This case highlights The Ombudsman's role in pointing out the facts when public officers are unjustly accused, and ensuring that the public sector continues to improve quality and efficiency.

TRANSPORT DEPARTMENT (TD) AND LANDS DEPARTMENT (Lands D)

Case Nos. OMB 2003/2039
OMB 2003/2040

TD and Lands D – public pier – (a) shirking responsibility when handling the complainant's enquiries and failing to give him a reasonable reply; and (b) failing to handle properly the issue of inadequate passenger facilities at a public pier – partially substantiated

The complainant, a ferry passenger, made enquiries to Lands D and TD in June and July 2003 about the ferry operator's unsuccessful application for the lease of a public pier to install passenger facilities. He alleged that the two departments were shirking their responsibility and ignoring the safety of ferry passengers.

Complaint (a)

2. In April 2002, on learning the ferry operator's intention to operate a ferry service using the public pier, TD notified Lands D immediately and requested it to process the operator's application for lease of the pier as soon as possible upon receipt of the application. Subsequent letters urging the operator to submit its application were also copied to Lands D. In December 2002, TD issued a licence to the operator to start the service. The licence stated that the ferry operator could have exclusive use of the pier. Nevertheless, the ferry operator did not apply to Lands D for leasing the pier until March 2003. It applied to Lands D for exclusive use of the pier with a view to installing passenger facilities. In May 2003, Lands D rejected the application on grounds of public interest and land policy. A copy of the rejection letter was sent to TD.

3. When the complainant made his enquiries about the issue, TD and Lands D were arguing over the leasing of the pier. The Lands D officer told the complainant that the Department could not grant the lease of the public pier unless TD gave its approval; whilst the TD officer informed him that TD had written to Lands D stating that TD supported the ferry operator's application. The complainant later repeatedly sought clarifications from the two departments. The Lands D officer said that TD's support of the application was not sufficient for Lands D to grant the lease, but TD could take over the pier and grant the lease directly. However, the TD officer said that TD could not do so.

4. Lands D observed that TD should not have granted exclusive use of the pier to the ferry operator without first consulting Lands D. As TD had already issued the ferry service licence, it should take over the pier and grant the lease directly. TD indicated that since April 2002, as Lands D had not responded on the matter, TD had assumed that Lands D would issue a short-term tenancy to the ferry operator. It was not until August 2003 that TD learned that it was not possible. Because of its jurisdiction, TD could not take over the pier and grant the lease.

5. This Office considered the staff concerned to have expressed only the stance of their own department when answering the complainant's enquiries, without realizing that they were actually responding to the same issue on behalf of Government. It was obvious that the departments lacked communication and coordination. The two officers concerned had failed to give the complainant a consolidated reasonable reply on behalf of Government.

6. Complaint (a) was, therefore, substantiated.

Complaint (b)

7. Like other public piers, the pier in question was already provided with basic facilities and safety features. The Home Affairs Department had not received any complaints about the safety of the pier. It was only out of commercial consideration that the ferry operator wanted to lease the pier for installing additional passenger facilities. It did not necessarily mean that there were inadequate proper facilities at the pier.

8. Complaint (b) was, therefore, unsubstantiated.

Other Areas of Maladministration

9. The problem in this case stemmed from TD's failure to check the land use restrictions of the pier before granting its exclusive use to the ferry operator. This obviously constituted maladministration.

10. Although rejection of the ferry operator's application was in line with the relevant land policy, Lands D had not responded to TD's documents copied to it and failed to remind TD of the land use restrictions of the pier. Furthermore, Lands D rejected the application directly without consulting TD, neglecting that the two departments were working partners. This Office considered Lands D too bureaucratic and inflexible, lacking alertness and a spirit of cooperation.

11. The Lands D officer concerned was also found negligent. Without first obtaining TD's confirmation, he had put forward to the complainant a proposal which TD later found to be not feasible.

Conclusion and Recommendations

12. Overall, this complaint was partially substantiated.

13. The Ombudsman recommended that TD and Lands D issue guidelines to their staff for proper handling of public enquiries involving other departments, in particular that replies should be made only with consensus having been reached with other departments.

14. The Ombudsman also recommended that TD review and revise its guidelines, and strengthen its supervision over, the procedures for issuing ferry service licences. She further recommended that Lands D formulate guidelines for proactive handling of copies of correspondence from other departments and to take effective measures to eliminate bureaucratic practices, to cultivate a positive service culture and promote a team spirit of cooperating with other departments.

15. TD and Lands D had accepted in principle our conclusion, though Lands D considered that its officer had not improperly handled the complainant's enquiries in this case. This Office would monitor the implementation of our recommendations by the two departments.

This case highlights The Ombudsman's role in ensuring that the public sector continues to improve quality and efficiency and that wrongs are righted.

Annex 12

Summaries of Selected Cases Concluded by Full Investigation

WATER SUPPLIES DEPARTMENT (WSD)

Case No. OMB 2003/0641

WSD – water charges – (a) providing the complainant with incorrect inspection findings; and (b) charging excessively high water charges – partially substantiated

The complainant lodged a complaint with WSD's Customer Telephone Enquiry Centre (CTEC) against excessively high water charges and asked for an investigation. After recording the details, CTEC referred the case to the Consumer Accounts Team (CAT) for follow-up action.

Complaint (a)

2. When processing the case, CAT staff misplaced the inspection findings of another account into the complainant's file. Based on those findings, CAT wrote to the complainant that they had found a water pipe in her unit to be illegally connected to a flushing cistern, which had leaked resulting in high water charges. The complainant pointed out that WSD staff had never inspected her unit and the findings were false.

3. According to WSD, it was an oversight of CAT staff. The Department had explained to the complainant over the telephone and sent her a written apology.

4. After reviewing the filing procedures of the Department's site inspection reports and its action on cases recorded by CTEC, this Office found that there were errors in the filing process which constituted maladministration. The Ombudsman considered this complaint point substantiated.

Complaint (b)

5. Regarding the water charges, it was confirmed upon testing that the water meter was working properly. As WSD had based the water consumption recorded in the meter to charge the complainant, it had not acted inappropriately. The Ombudsman, therefore, considered this complaint point unsubstantiated.

Conclusion

6. Overall, The Ombudsman considered this complaint partially substantiated.

7. To avoid recurrence of such incidents, WSD had instructed its staff concerned to be more careful when handling files and responding to complaints.

This case highlights The Ombudsman's role in ensuring that wrongs are righted.

WATER SUPPLIES DEPARTMENT (WSD)

Case No. OMB 2003/2110

WSD – fire hydrant leakage – failing to take immediate follow-up action – substantiated

The complainant alleged that WSD had failed to take immediate action to repair a leaking fire hydrant despite his complaint thrice.

2. According to WSD, its staff conducted a site inspection after receiving the first complaint. Finding the fire hydrant leaking slightly, they secured the valve to stop it. The complainant later observed that leakage again. He then lodged his complaint twice with WSD's Customer Telephone Enquiry Centre (CTEC). Nevertheless, WSD took no action for more than ten days. Only when the complainant complained to this Office that WSD realised their omission.

3. WSD explained that whenever CTEC received a fault report outside office hours and considered it "serious", it would ask the standby duty staff to take action. However, that evening, the duty supervisor considered fire hydrant leakage a "minor" fault whichcould be dealt with by the regional staff the next day during office hours. The duty supervisor thus sent the complaint to the regional office for its day shift staff, without informing the night shift standby duty staff to monitor. When the day shift staff downloaded the complaint from the computer and noted that it had been received outside office hours, they assumed that the night shift had handled it and therefore took no action.

4. To avoid recurrence, WSD has revised its procedures for handling fault complaints -

(a) all fault reports received by CTEC outside office hours, whether "serious" or "minor", should be faxed to the regional office. Standby duty staff should endeavour to complete the necessary work within their shift. For cases yet to be completed, the duty works supervisor should pass them personally to day shift regional staff for follow-up action in the morning of the next working day;

(b) when handling cases received outside office hours each morning, the day shift regional staff should register every fault report in the logbook for ready checking and then distribute the reports to day shift regional team members for action. The team members concerned have to sign on the logbook to acknowledge receipt; and

(c) day shift regional staff receiving fault reports recorded outside office hours should check each report carefully, cross-check against outstanding cases passed by the duty works supervisor and ensure that they have been dealt with properly to avoid missing any case.

5. This Office observed that WSD had no clear guidelines for CTEC staff reference. Had there been guidelines similar to those in paragraph 4(a), CTEC staff would have informed the night shift standby duty staff of the two "minor" complaints and the day shift staff would not have misunderstood the position. However, the day shift staff had also been careless in not checking with the night shift colleagues.

6. Overall, The Ombudsman considered this complaint substantiated.

7. The Ombudsman made the following recommendations to the Director of Water Supplies –

(a) to incorporate the revised procedures in paragraph 4 into departmental guidelines for staff; and

(b) to equip staff (especially supervisors) better with computer knowledge to facilitate effective monitoring of complaint handling.

This case highlights The Ombudsman's role in ensuring that wrongs are righted.

Summary of Findings from Thematic Household Survey

Q1. Have you ever complained or thought about complaining a government department or public body maladministration?

- Key findings are –
  - 13.8% respondents (or some 784, 800 persons) had lodged a complaint or thought about lodging a complaint about maladministration of a government department or public body
  - Most were in the age group of 20 to 49 (75.7%)
  - Most were better educated (86.9% had secondary education level or above)
  - Most were economically active (74.8%)

Q2. Which aspect (s) of service (s) have you complained or thought about complaining?

- Key findings are –
  - Housing, planning, environment, lands and works (37.6%)
  - Health and welfare (24.3%)
  - Transport (14.1%)
  - Government finances (12.3%)
  - Education and manpower (12.0%)
  - Public order and immigration / emigration services (10.7%)
  - Constitutional, electoral, legal and judicial affairs (10.2%)

Q3. What was / were the nature of your dissatisfaction?

- Key findings are –
  - Ineffective control (36.8%)
  - Negligence and omission (29.2%)
  - Poor staff attitude (18.7%)
  - Faulty procedures (16.9%)
  - Disparity in treatment and unfairness (16.9%)
  - Delay (15.8%)
  - Misleading advice or wrong decision (13.9%)
  - Lack of response (11.6%)
  - Failure to follow procedures (7.9%)
  - Abuse of power (7.5%)
  - Selective enforcement (6.1%)
  - Unreasonable fines / arrests (4.4%)

Summary of Findings from Thematic Household Survey

Q4. Which of the following channels do you think you would approach if you wish to lodge a complaint about maladministration of a government department or public body? (* Multiple answers were allowed.)

- Key findings are –
  - Complaint channel of the department / public body concerned (25.1%)
  - District Councils / members of the District Councils (19.8%)
  - Media (14.7%)
  - Office of The Ombudsman (9.8%)
  - Equal Opportunities Commission (4.0%)
  - Legislative Council / members of the Legislative Council (2.2%)
  - Independent Commission Against Corruption (2.2%)
  - Others (40.8%)

➢ Older persons tended to approach " District Councils / members of the District Councils ", while younger persons would approach the department / public body concerned and media.

➢ Those who are better educated tended to approach the department / public body concerned, media and Office of The Ombudsman.

Q5. What are your reasons for choosing this / these channel(s)?

- The findings are –
  - Convenience (44.5%)
  - Efficiency in processing complaints (27.2%)
  - Ability to draw attention of the public and give pressure to the department / organisation concerned (23.3%)
  - Thoroughness in investigation / handling complaints (13.4%)
  - Independence of operation (11.8%)
  - Objectivity and impartiality (11.1%)
  - Power of the channel (7.8%)
  - Effectiveness in resolving dispute and problems (6.6%)
  - Politeness of staff (2.0%)

Q6. Have you ever lodged a complaint about a government department or public body maladministration through the Office of The Ombudsman?

- The findings are –
  - Yes (0.7%) (or some 41,700 persons)
  - No (99.3%) (or some 5,650,900 persons)

Summary of Findings from Thematic Household Survey

Q7. If you want to lodge a complaint through the Office of The Ombudsman, through which of the following means would you lodge the complaint?

- The findings are –
  - Telephone contact (69.8%)
  - Face-to-face interview / personal visit to the Office of The Ombudsman (10.3%)
  - Mailing letter (8.0%)
  - E-mail (5.0%)
  - Other people (4.2%)
  - Mailing complaint form (1.5%)
  - Fax (1.1%)
- ➢ The younger generation tended to choose complaint by e-mail.
- ➢ Those with higher educational attainment would choose written form such as sending letter, e-mail, complaint form and fax.

Q8. If you want to lodge a complaint through the Office of The Ombudsman, through which of the following means do you prefer the Office to reply to you? (* Multiple answers were allowed.)

- The findings are –
  - Telephone contact (57.9%)
  - Written reply (41.2%)
  - Face-to-face discussion (16.3%)
  - E-mail (7.4%)

Q9. If you want to lodge a complaint through the Office of The Ombudsman, what do you expect the Office to do for you? (* Multiple answers were allowed.)

- Key findings are –
  - Preventing recurrence of similar problems (61.4%)
  - Improving the efficiency and quality of service in the public sector (38.2%)
  - Investigating the complaint, and finding out whether or not it was substantiated (30.8%)
  - Recommending specific remedial actions to the department / public body concerned (30.1%)
  - Requesting apologies from the department / public body concerned (10.5%)
  - Recommending monetary compensation to the department / public body concerned (8.7%)

The Ombudsman 申訴專員

Summary of Findings from Thematic Household Survey

Q10. Below are a number of attributes to measure the effectiveness of complaint channels. Please tell me which five attributes you consider most important.

- Key findings are –
  - Keeping information confidential, and protecting the privacy of complainants (75.8%)
  - Providing easily accessible complaint channels for complainants (73.4%)
  - Offering speedy action and resolution within pre-determined time limits (67.3%)
  - Objective and free from undue influence or interference (61.7%)
  - Making scope of service conspicuous to the public (43.0%)

Q11. Please give an importance score to each of these five attributes, a score of "3" to the most important, "2" to the less important and "1" to the least important.

- The five attributes with high score are –
  - Keeping information confidential, and protecting the privacy of complainants (mean score 2.83)
  - Efficient, offering speedy action and resolution within pre-determined time limits (mean score 2.81)
  - Objective and free from undue influence or interference (mean score 2.79)
  - Identification of critical issues in complaints (mean score 2.76)
  - Providing easily accessible complaint channels for complainants (mean score 2.75)

Q12. Now I would like to invite you to assess the performance of the Office of The Ombudsman based on these five attributes. Please give a score of "3" if you consider its performance in this aspect good, "2" average and "1" poor.

- The five aspects with high score are –
  - Keeping information confidential, and protecting the privacy of complainants (mean score 2.49)
  - Objective and free from undue influence or interference (mean score 2.34)
  - Helpful and courteous staff (mean score 2.34)
  - Providing useful information and advice (mean score 2.24)
  - Informing the complainants the progress regularly (mean score 2.22)

Summary of Findings from Thematic Household Survey

Q13. As far as you know, is the Office of The Ombudsman empowered to conduct direct investigations on problems of public concern even though no complaints were received?

- Key findings are –
  - 20.6% of respondents (or some 1,174,400 persons) were aware of this function of The Ombudsman. Over half of them considered direct investigation effective in meeting its objectives and about one-tenth considered it ineffective.
  - 21.6% thought that this Office was not empowered to do direct investigation

➢ Older persons and those who attained higher education level tended to be more aware of this power.

Q14. Please rate the effectiveness of the direct investigations conducted by the Office of The Ombudsman in the following aspects, a score of "3" means effective, "2" means average and "1" means ineffective.

- The five aspects with high score are –
  - Putting pressure to departments / organisations concerned for making improvement (mean score 2.44)
  - Preventing recurrence of similar problems (mean score 2.37)
  - Resolving problems before they get worse (mean score 2.34)
  - Making recommendations to improve public administration (mean score 2.32)
  - Exposing deficiencies in the administration (mean score 2.27)

Q15. Have you ever seen or heard of the publicity of the Office of The Ombudsman in the following channels?

- Key findings are –
  - 71.5% of the respondents (or some 3,663,800 persons) were aware of the Office's publicity
  - The channels from where they were aware of the publicity of the Office of The Ombudsman are –

    (a) Television (64.4%)

    (b) Newspaper (27.9%)

    (c) Radio (26.1%)

    (d) Poster / publication of the Office of The Ombudsman (14.5%)

    (e) Homepage of the Office of The Ombudsman (2.9%)

Sample Size : 8,022

Base : Persons aged 15 and over

Annex 14

Panel of Professional Advisers

Advisers

Mr. Brian G. BAILLIE

Mr. Francis Shu-ying BONG

Mrs. Anne R. CARVER

Professor Johannes M.M. CHAN

Professor T.K. CHAN

Mr. Gary Chung-keung CHANG

Mr. Yan-kee CHENG

Mr. Joseph Ming-kuen CHOW

Professor M.J.A. COORAY

Ms. Jill H. COTTRELL

Professor Yash P.L. GHAI

Dr. Raymond Chung-tai HO

Professor P.C. HO

Mr. David George HOLMES

Mr. KAN Kam-choy, Anson

Professor Kar-neng LAI

Mr. Edmund Kwong-ho LEUNG

Mr. Man-chiu LO

Professor Felice Lieh-MAK

Professor Dhirendra K. SRIVASTAVA

Mr. Benny Y.T. TAI

Mr. Vincent Kam-chuen TSE

Mr. Chi-tin WAN

Mr. Siu-kai WAN

Professor Gui-guo WANG

Dr. Chung-kwong WONG

Professor John WONG

Professor C.Y. YEUNG

Mr. Patrick Se-kit YUEN

* In alphabetical order

Annex 15

Visits to the Office of The Ombudsman

Date	Visitors*
9 April 2003	Mr. LI Shishi, Deputy Director, Legislative Affairs Office of State Council
24 May 2003	Postgraduate students from School of Professional and Continuing Education of The University of Hong Kong
5 August 2003	Business Administration Training Programme for Siping Senior Executives, organised by School of Professional and Continuing Education of The University of Hong Kong
8 August 2003	Delegates from Policy and Legal Affairs Department under General Administration of Customs
2 September 2003	Delegates from Ethics Department of Taipei
4 September 2003	Delegates from Supervision Bureau of Hangzhou city, organised by J & W International Limited (HK)
16 September 2003	Delegates from Shenzhen Municipal Government
19 September 2003	Delegates from Organisation Department of Party Committee, Changchun, Jilin Province, organised by The Hong Kong Polytechnic University

Annex 15

Visits to the Office of The Ombudsman

Date	Visitors*
10 October 2003	Mr. Miao Xiaobao, Director, Justice Bureau of Shanghai
16 October 2003	Delegates from Organisation Department of Party Committee, Beijing Dongchang District, organised by The Hong Kong Polytechnic University
21 October 2003	Postgraduate students from School of Professional and Continuing Education of The University of Hong Kong
22 October 2003	Board of Directors of Asian Ombudsman Association
28 October 2003	Leading cadres from Central Government, organised by Liaison Office of Central People's Government in Hong Kong Special Administrative Region
30 October 2003	Delegates from Complaint Reception Office of Shanghai Municipal Government
2 December 2003	Delegates from Ministry of Information Industry, organised by Office of the Telecommunications Authority
17 December 2003	Delegates from Control Yuan of Taiwan

Annex 15

Visits to the Office of The Ombudsman

Date	Visitors*
12 January 2004	Delegates from Legal Clinic of The Northwest University of Political Science and Law in Xian, organised by Asian Legal Resource Centre
11 February 2004	Delegates from Shanghai, organised by Hong Kong-Shanghai Economy Development Association Limited
4 March 2004	Delegates from Guizhou Province Discipline-Inspecting Commission of China Communist Party
16 March 2004	Fushuan Discipline Inspection Commission and Supervision Bureau Study Group, organised by Global Modern Education (Group) Limited
26 March 2004	Representatives from Equal Opportunities Commission

*Excluding group visits from local schools and social service agencies

Annex 16

Conferences and Duty Visits

Date	Participants	Conferences / Duty Visits
1-3 September 2003	Ms. Alice Tai The Ombudsman Mr. Frederick Tong Assistant Ombudsman	21st Australasian and Pacific Ombudsman Conference in Madang, Papua New Guinea
30 September- 3 October 2003	Ms. Alice Tai The Ombudsman	International Ombudsman Institute Board of Directors' Meeting in Quebec, Canada
19-23 October 2003	Ms. Alice Tai The Ombudsman Mr. Tony Ma Assistant Ombudsman Mr. Alan Lam Senior Executive Officer Mr. Tommy Wong Senior Investigation Officer Mr. Victor Wong Investigation Officer Mr. Andy Chue Investigation Officer	Board of Directors' Meeting of Asian Ombudsman Association (AOA) in Macau Special Administrative Region
2-9 November 2003	Ms. Alice Tai The Ombudsman Mr. Tony Ma Assistant Ombudsman Mr. Y C Mok Chief Executive Officer	Exchange Programme with China Supervision Institute in Beijing, Guilin and Chengdu

Annex 16

Conferences and Duty Visits

Date	Participants	Conferences / Duty Visits
2-9 November 2003 (cont'd)	Mr. Matthew Chan Chief Investigation Officer Mr. Alan Lam Senior Executive Officer Mr. Clements Wong Senior Investigation Officer Ms. Rita Lo Senior Investigation Officer Mr. Kent Wong Senior Investigation Officer Ms. Kathy Sin Investigation Officer Mr. Danny Ngan Investigation Officer	
5-9 January 2004	Ms. Alice Tai The Ombudsman	Conference on "Good Governance" in Ulaanbaatar, Mongolia
16-21 February 2004	Ms. Alice Tai The Ombudsman	Asian Ombudsman Association Sub-Committee Meeting (AOA) in Islamabad, Pakistan
2 March 2004	Ms. Alice Tai The Ombudsman Mr. Tommy Wong Chief Investigation Officer Ms. Kathleen Chan Senior External Relations Officer	Meeting with members of the Foreign Affairs Department of the Ministry of Supervision in Shenzhen

Table 1

Caseload

	Reporting year#				
	1999-2000	2000-01	2001-02 (10½ months)	2002-03	2003-04
(A) Enquiries received	**9,323**	**11,821**	**12,900**	**14,298**	**12,552**
(B) Complaints received	**3,101**	**3,709**	**3,736**	**4,382**	**4,661**
(C) Complaints brought forward	**891**	**581**	**814**	**760**	**772**
(D) Complaints for processing = (B) + (C)	**3,992**	**4,290**	**4,550**	**5,142**	**5,433**
(E) Complaints concluded	**3,411**	**3,476**	**3,790**	**4,370**	**4,345**
By preliminary inquiries	**1,436**	**1,064**	**1,567**	**2,172**	**1,834**
– By referral to complainee departments / organisations for replies (INCH)	467	364	353	176	203
– By rendering assistance / clarification (RAC)	969	700	1,214	1,996	1,631
By full investigation	**194**	**161**	**331**	**124**	**284**
- Withdrawn / Discontinued	11	-	6	2	6
- Substantiated	22	28	18	15	14
- Partially substantiated	100	41	263	39	24
- Unsubstantiated	61	80	42	68	236
- Incapable of determination	-	12	2	0	1
- Substantiated other than alleged	-	-	-	-	3
By mediation	**10**	**29**	**19**	**6**	**7**
Complaints screened out	**1,417**	**1,859**	**1,563**	**1,729**	**1,892**
- Restrictions on investigation	592	795	685	971	1,259
- Outside jurisdiction	825	1,064	878	758	633
Complaints withdrawn / discontinued	**354**	**363**	**310**	**339**	**328**
(F) Percentage of complaints concluded = (E) ÷ (D)	**85%**	**81%**	**83%**	**85%**	**80%**
(G) Total cases carried forward = (D) - (E)	**581**	**814**	**760**	**772**	**1,088**
(H) Direct investigations completed	**3**	**5**	**4**	**6**	**5**
(I) Direct investigation assessment reports produced	**18**	**9**	**0**	**1**	**5**

\# Period of Reporting Years
99 / 00 : 16.5.99 - 15.5.00 00 / 01 : 16.5.00 - 15.5.01
01 / 02 : 16.5.01 - 31.3.02 02 / 03 : 1.4.02 - 31.3.03
03 / 04 : 1.4.03 - 31.3.04

From 2001 / 02, the reporting year ends on 31 March to coincide with the end of financial year.

Table 2

Enquiries / Complaints Received



Table 3

Distribution of Enquiries / Complaints

Organisation	Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	72	35
Airport Authority	3	2
Architectural Services Department	16	12
Audit Commission	1	2
Auxiliary Medical Service	2	0
Buildings Department	216	147
Census and Statistics Department	2	3
Civil Aid Service	3	1
Civil Aviation Department	5	2
Civil Engineering Department	11	6
Companies Registry	17	4
Correctional Services Department	40	227
Customs and Excise Department	51	21
Department of Health	96	254
Department of Justice	33	16
Drainage Services Department	37	29
Electrical and Mechanical Services Department	20	17
Employees Retraining Board	13	9
Environmental Protection Department	51	74
Equal Opportunities Commission	33	9
Fire Services Department	49	26
Food and Environmental Hygiene Department	521	249
General Office of the Chief Executive’s Office	7	13
Government Flying Service	0	1
Government Laboratory	2	1
Government Logistics Department	5	4
Government Property Agency	9	12
GS - Chief Secretary for Administration’s Office	3	21
GS - Civil Service Bureau	3	40
GS - Commerce, Industry and Technology Bureau	0	5
GS - Economic Development and Labour Bureau	1	4
GS - Education and Manpower Bureau	91	88
GS - Environment, Transport and Works Bureau	0	17
GS - Financial Services and the Treasury Bureau	0	4
GS - Health, Welfare and Food Bureau	1	7
GS - Home Affairs Bureau	1	12
GS - Housing, Planning and Lands Bureau	4	10
GS - Security Bureau	0	4
GS - (PO) Chief Secretary for Administration’s Private Office	0	1
GS - (PO) Finanical Secretary’s Private Office	0	1
GS - Unclassified	196	0
Government Supplies Department	2	1
Highways Department	56	73
Home Affairs Department	176	364
Hong Kong Arts Development Council	2	1
Hong Kong Examinations and Assessment Authority	34	11
Hong Kong Housing Authority	62	38
Hong Kong Housing Society	69	38

Table 3

Distribution of Enquiries / Complaints

Organisation	Enquiries	Complaints
Hong Kong Monetary Authority	28	16
Hong Kong Observatory	3	0
Hong Kong Sports Development Board	8	4
Hospital Authority	402	140
Housing Department	839	492
Immigration Department	323	111
Information Services Department	3	1
Information Technology Services Department	1	1
Inland Revenue Department	132	61
Intellectual Property Department	2	1
Invest Hong Kong	1	6
Judiciary Administrator	202	82
Kowloon-Canton Railway Corporation	18	18
Labour Department	205	45
Land Registry	10	7
Lands Department	245	283
Legal Aid Department	163	66
Legislative Council Secretariat	3	2
Leisure and Cultural Services Department	145	114
Mandatory Provident Fund Schemes Authority	52	14
Marine Department	20	2
Office of the Telecommunications Authority	45	9
Official Receiver's Office	50	27
Planning Department	12	94
Post Office	98	56
Privacy Commissioner for Personal Data	12	13
Radio Television Hong Kong	13	8
Rating and Valuation Department	29	32
Registration and Electoral Office	12	15
Securities and Futures Commission	28	10
Social Welfare Department	424	142
Student Financial Assistance Agency	79	22
Television and Entertainment Licensing Authority	12	4
Territory Development Department	12	13
Trade and Industry Department	22	5
Transport Department	211	173
Treasury	10	9
University Grants Committee	1	2
Urban Renewal Authority	24	14
Vocational Training Council	39	9
Water Supplies Department	164	81
Total	**6,118**	**4,120**

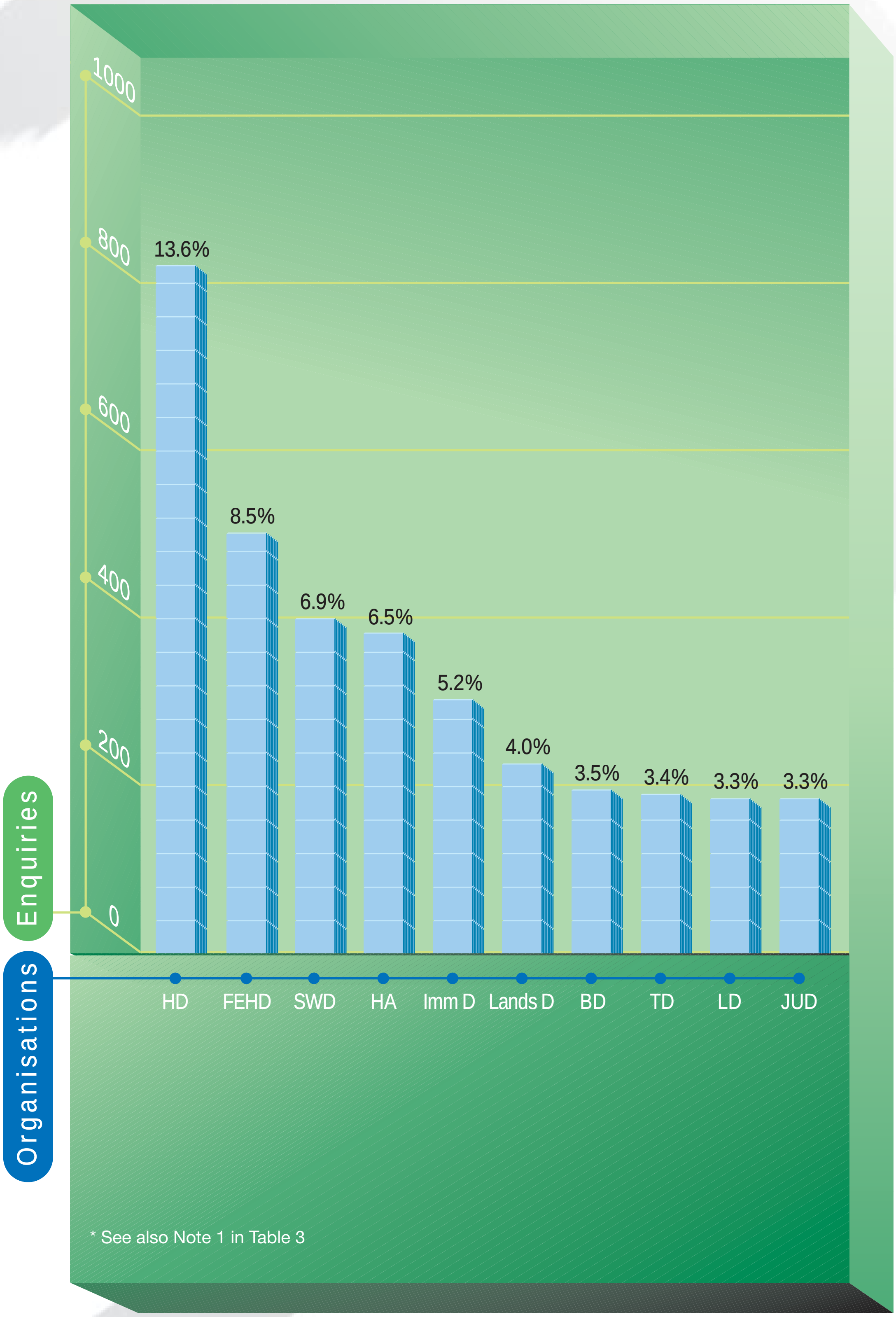
Note 1: The total number of enquiries and complaints received in Table 1 are 12,552 and 4,661 respectively. They are different from the figures shown in Table 3 for the following reasons:

- An enquiry / complaint involving more than one organisation is shown against each of the organisation.
- Enquiries / complaints involving bodies outside The Ombudsman's jurisdiction are not shown.

Note 2: Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries / complaints received in the reporting year are not shown.

Table 4

Enquiries : Top Ten Organisations



* See also Note 1 in Table 3

Table 5

Complaints : Top Ten Organisations *

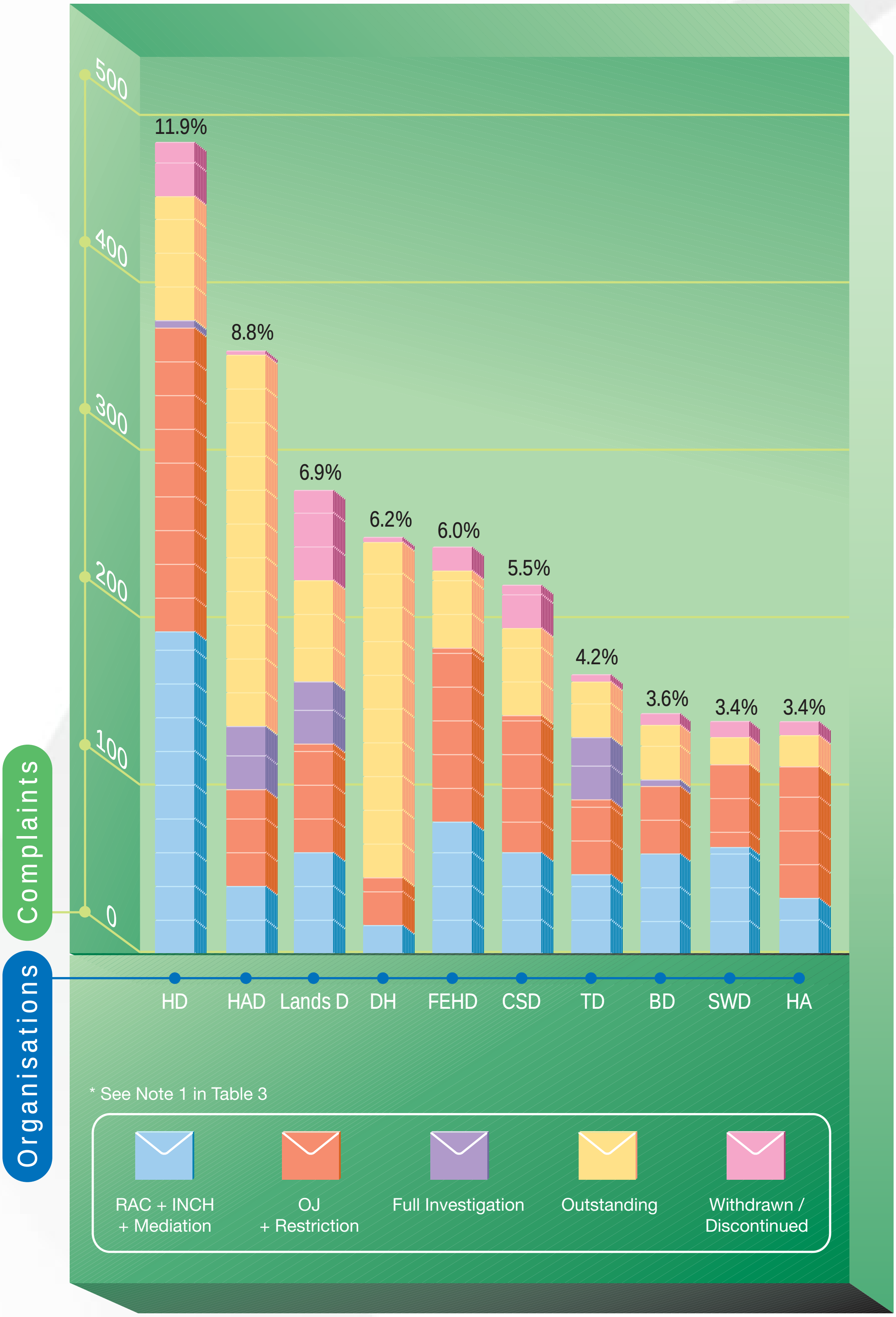


Table 6

Nature of Complaints Concluded : 4,345 Cases

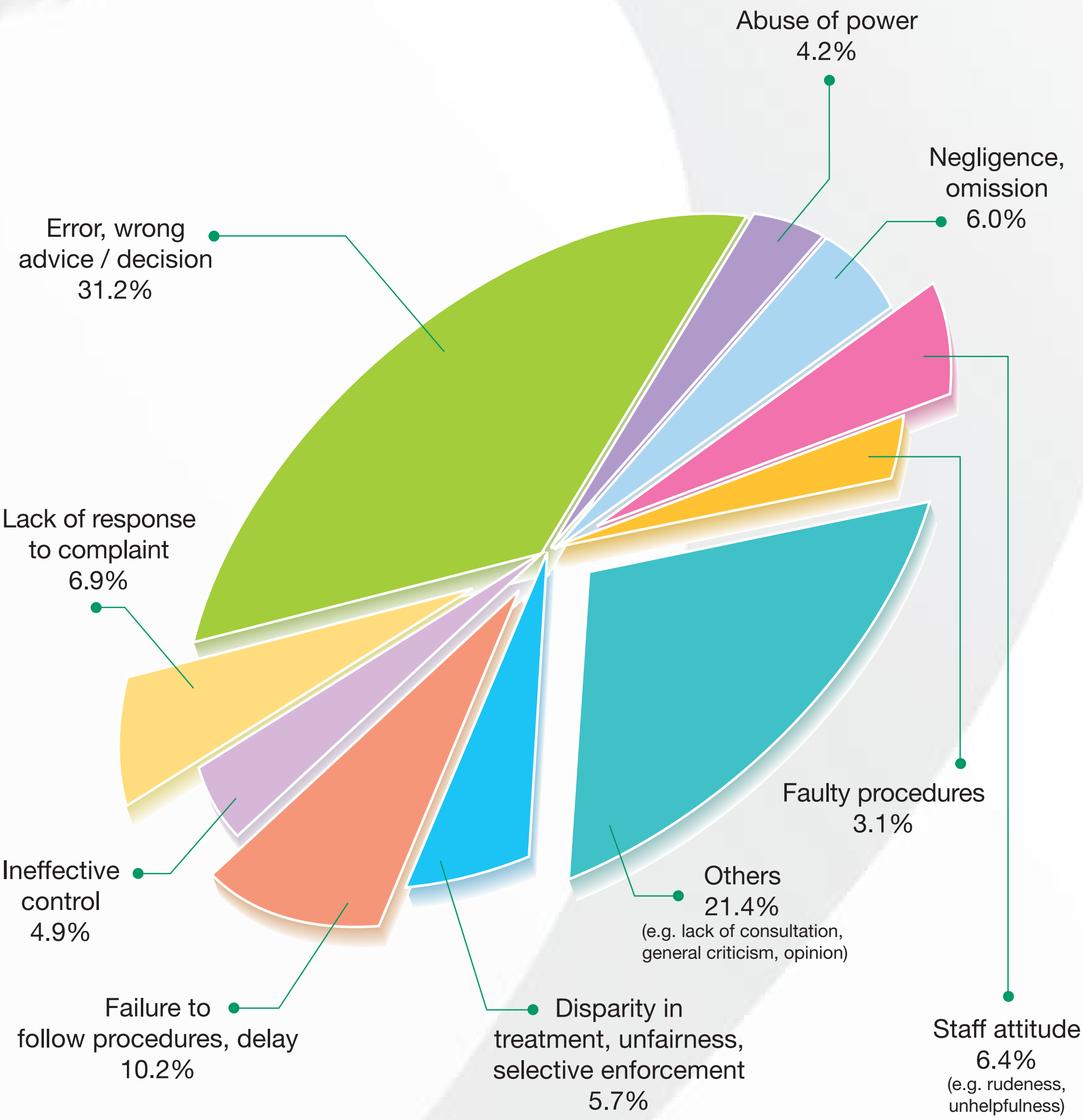


Table 7

Classification of Complaints Concluded : 4,345 Cases

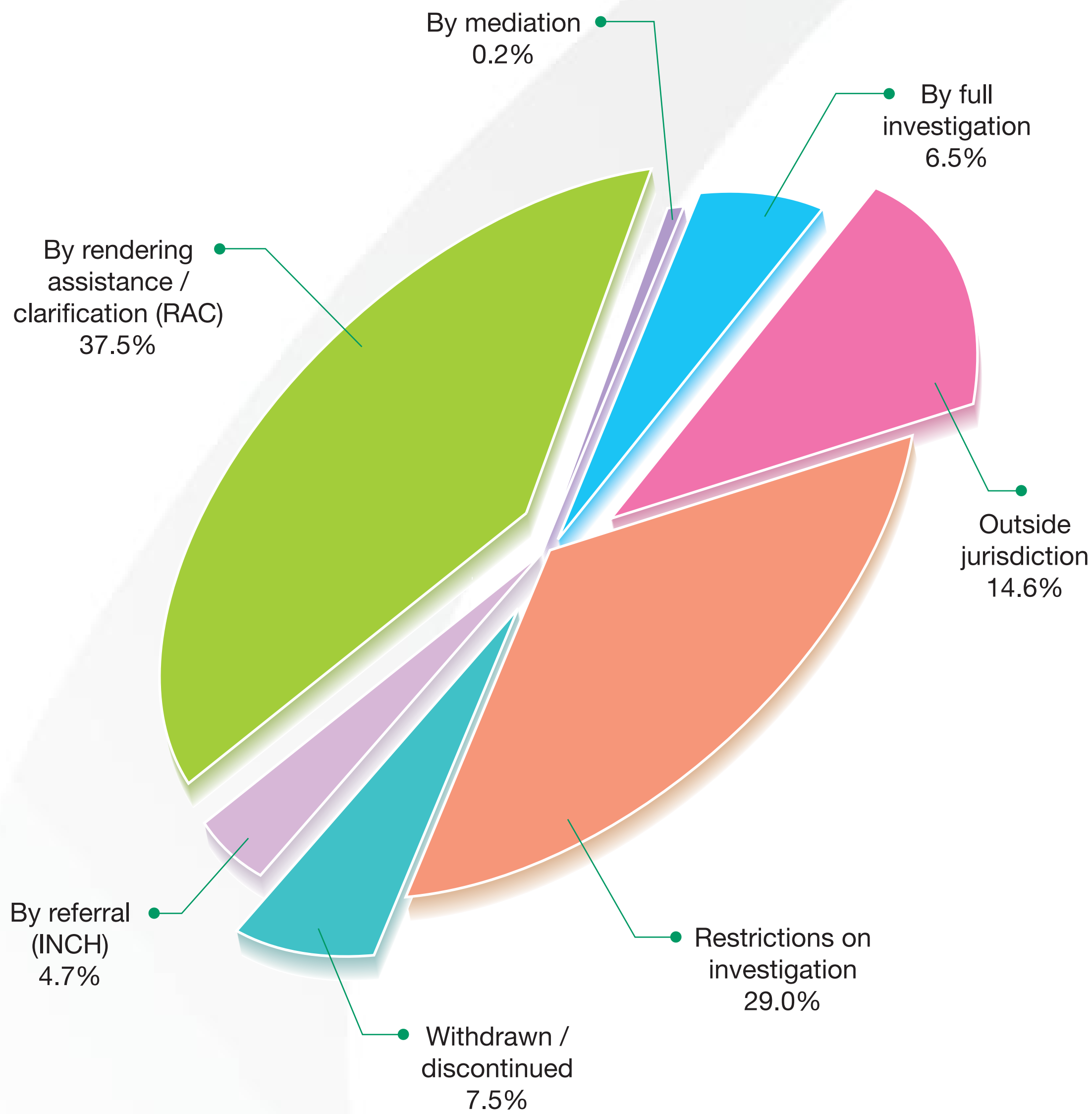
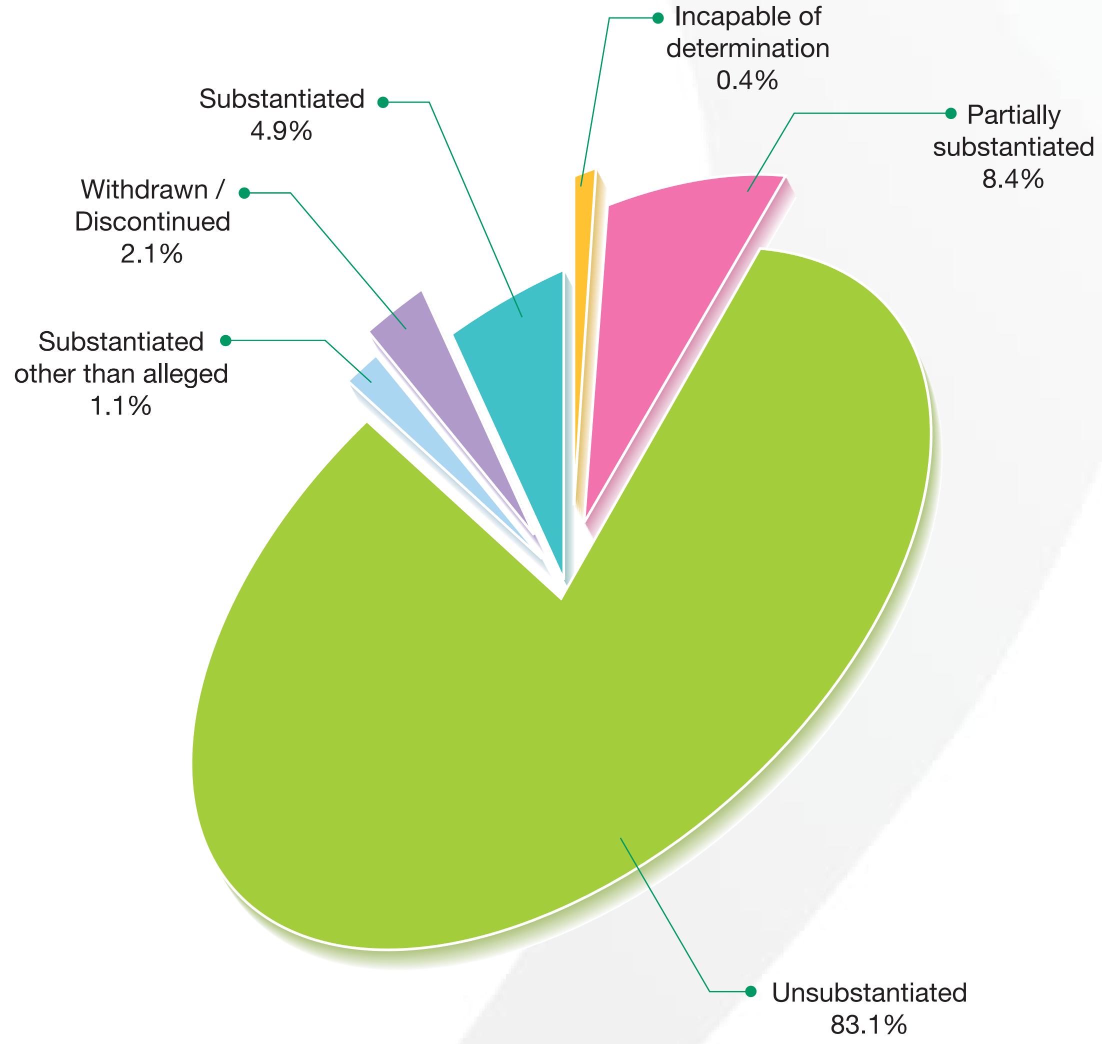


Table 8

Results of Complaints Concluded by Full Investigation : 284 Cases



The Ombudsman 申訴專員

Table 9

Result of Complaints Concluded by Rendering Assistance / Clarification

Organisation	No. of complaints	Remedial action taken / suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Agriculture, Fisheries and Conservation Department	14	4 (29%)	10 (71%)		3
Airport Authority	1		1 (100%)		
Architectural Services Department	2	1 (50%)	1 (50%)		2
Buildings Department	83	12 (15%)	70 (84%)	1 (1%)	14
Civil Aviation Department	1		1 (100%)		
Civil Engineering Department	3		3 (100%)		
Companies Registry	4		3 (75%)	1 (25%)	
Correctional Services Department	75		59 (79%)	16 (21%)	
Customs and Excise Department	4	1 (25%)	3 (75%)		1
Department of Health	18	2 (11%)	15 (83%)	1 (6%)	3
Department of Justice	3	1 (33%)	2 (67%)		
Drainage Services Department	14	2 (14%)	12 (86%)		6
Electrical and Mechanical Services Department	6	1 (17%)	5 (83%)		2
Employees Retraining Board	3		3 (100%)		
Environmental Protection Department	22	1 (5%)	21 (95%)		5
Equal Opportunities Commission	4	1 (25%)	2 (50%)	1 (25%)	3
Fire Services Department	8	1 (12.5%)	7 (87.5%)		
Food and Environmental Hygiene Department	203	16 (8%)	184 (91%)	3 (1%)	29
General Office of the Chief Executive's Office	8	5 (63%)	2 (25%)	1 (12%)	7
Government Laboratory	1		1 (100%)		
Government Logistics Department	1		1 (100%)		
Government Property Agency	6		6 (100%)		
Government Secretariat					
- Chief Secretary for Administration's Office	17	6 (35%)	11 (65%)		4
- Civil Service Bureau	3		3 (100%)		
- Commerce, Industry and Technology Bureau	5		5 (100%)		1
- Economic Development and Labour Bureau	2		2 (100%)		
- Education and Manpower Bureau	43	2 (5%)	41 (95%)		
- Environment, Transport and Works Bureau	5	2 (40%)	3 (60%)		2
- Financial Services and the Treasury Bureau	3		3 (100%)		
- Health, Welfare and Food Bureau	2		1 (50%)	1 (50%)	
- Home Affairs Bureau	6	1 (17%)	5 (83%)		1
- Housing, Planning and Lands Bureau	2		2 (100%)		
- Security Bureau	1		1 (100%)		
Highways Department	21	8 (38%)	13 (62%)		3
Home Affairs Department	161	9 (6%)	150 (93%)	2 (1%)	13
Hong Kong Arts Development Council	1	1 (100%)			
Hong Kong Examinations and Assessment Authority	3		3 (100%)		
Hong Kong Housing Authority	12	3 (25%)	9 (75%)		2
Hong Kong Housing Society	12		12 (100%)		
Hong Kong Monetary Authority	12	1 (8%)	11 (92%)		1

Table 9

Result of Complaints Concluded by Rendering Assistance / Clarification

Organisation	No. of complaints	Remedial action taken / suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Hong Kong Police Force	3	1 (33%)	2 (67%)		
Hong Kong Sports Development Board	2		2 (100%)		
Hospital Authority	46	6 (13%)	33 (72%)	7 (15%)	7
Housing Department	166	45 (27%)	115 (69%)	6 (4%)	14
Immigration Department	39	3 (8%)	32 (82%)	4 (10%)	1
Independent Commission Against Corruption	1		1 (100%)		
Information Services Department	1	1 (100%)			
Inland Revenue Department	34	10 (29%)	24 (71%)		3
Judiciary Administrator	28	1 (4%)	23 (82%)	4 (14%)	1
Kowloon-Canton Railway Corporation	4		4 (100%)		
Labour Department	26	3 (12%)	23 (88%)		6
Land Registry	3		3 (100%)		
Lands Department	105	17 (16%)	85 (81%)	3 (3%)	31
Legal Aid Department	29	4 (14%)	25 (86%)		6
Legislative Council Secretariat	1		1 (100%)		
Leisure and Cultural Services Department	44	12 (27%)	32 (73%)		20
Mandatory Provident Fund Schemes Authority	7		7 (100%)		
Office of the Telecommunications Authority	5		4 (80%)	1 (20%)	
Official Receiver's Office	16	1 (6%)	14 (88%)	1 (6%)	2
Other Statutory Bodies	1		1 (100%)		
Planning Department	5		5 (100%)		
Post Office	20	8 (40%)	11 (55%)	1 (5%)	9
Privacy Commissioner for Personal Data	6	1 (17%)	5 (83%)		1
Private Organisations / Individual / Companies	1		1 (100%)		
Radio Television Hong Kong	2	1 (50%)	1 (50%)		
Rating and Valuation Department	21	4 (19%)	17 (81%)		2
Registration and Electoral Office	6		4 (67%)	2 (33%)	
Securities and Futures Commission	7		7 (100%)		
Social Welfare Department	69	4 (6%)	62 (90%)	3 (4%)	
Student Financial Assistance Agency	10	3 (30%)	7 (70%)		4
Television and Entertainment Licensing Authority	3		3 (100%)		
Territory Development Department	6	1 (17%)	5 (83%)		1
Trade and Industry Department	4		4 (100%)		
Transport Department	53	6 (11%)	47 (89%)		3
Treasury	4		4 (100%)		
Urban Renewal Authority	8		8 (100%)		
Vocational Training Council	2		2 (100%)		
Water Supplies Department	48	6 (12%)	42 (88%)		10
Total	**1,631**	**219**	**1,353**	**59**	**223**

Note 1: Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by Rendering Assistance / Clarification are not shown.

Table 10A

Processing Time of Complaints Concluded

TIME \ YEAR	1999-2000	2000-01	2001-02 (10 1/2 months)	2002-03	2003-04
Less than 1 month	44.7%	56.5%	53.7%	59.2%	**56.4%**
1 – 3 months	23.2%	20.5%	18.3%	15.1%	**14.8%**
3 – 6 months	26.6%	20.5%	22.6%	24.0%	**27.0%**
6 – 9 months	4.3%	1.7%	2.1%	0.9%	**1.0%**
9 – 12 months	0.9%	0.6%	0.9%	0.3%	**0.4%**
More than 12 months	0.3%	0.2%	2.4%	0.5%	**0.4%**
Total	**3,411**	**3,476**	**3,790**	**4,370**	**4,345**

Table 10B

Processing Time for Complaints Concluded by Full Investigation and Other Modes

TIME \ YEAR	1999-2000	2000-01	2001-02 (10 1/2 months)	2002-03	2003-04
Concluded by full investigation					
Less than 3 months	5.2%	6.8%	0.3%	0.8%	**37.7%**
3 – 6 months	55.0%	49.7%	50.8%	56.5%	**45.4%**
6 – 9 months	25.3%	26.1%	13.6%	14.5%	**8.4%**
9 – 12 months	8.8%	13.7%	8.4%	9.7%	**3.9%**
More than 12 months	5.7%	3.7%	26.9%	18.5%	**4.6%**
Number of complaints	**194**	**161**	**331**	**124**	**284**
Concluded by other modes (i.e. Item E in Table 1 excludes complaints concluded by full investigation)					
Less than 1 month	47.3%	59.3%	58.8%	60.9%	**60.3%**
1 – 3 months	24.3%	21.2%	20.0%	15.5%	**13.2%**
3 – 6 months	24.8%	19.0%	19.9%	23.1%	**25.7%**
6 – 9 months	3.1%	0.5%	1.0%	0.4%	**0.5%**
9 – 12 months	0.5%	0.0%	0.2%	0.1%	**0.2%**
More than 12 months	0.0%	0.0%	0.1%	0.0%	**0.1%**
Number of complaints	**3,217**	**3,315**	**3,459**	**4,246**	**4,061**

Snapshots



Publicising our enquiry and complaint hotline on information panels in MTR trains



Roving exhibition at a shopping arcade in housing estate, featuring a quiz and film clip



Banner promoting our roving exhibition



Posters displaying in public places, apart from distribution through Government departments

Snapshots



Justices of the Peace (JPs) under our JPs Assistance Scheme visiting the Hong Kong Central Library



Officers of the Hong Kong Observatory sharing their experience with JPs

Snapshots



Our officer explaining our work and jurisdiction to senior citizens visiting our Resource Centre

Students visiting our Office on our regular invitation programme



Snapshots



Ms. Alice Tai,
The Ombudsman,
speaking at the Complaint
Management Workshop



Dr. Chung-kwong Wong,
our Medical Adviser (right),
demonstrating with live
snake to participants of the
Workshop on how to deal
with stressful situations



Over 300 representatives
from Government and
public organisations at
our Workshop



Mr. Albert Cheng, Current Affairs Commentator (middle), and Mr. Tony Ma, Assistant Ombudsman (right), facilitating a group discussion on complaint cases at our Workshop



Representatives of Hong Kong Mediation Council explaining the role of mediation in resolving disputes

Snapshots



Ms. Alice Tai,
The Ombudsman,
with winners of
The Ombudsman Awards



Ms. Alice Tai,
The Ombudsman, with the three winners of the 2003 Ombudsman Awards: Transport Department, Food and Environmental Hygiene Department and Post Office

Snapshots



Media members at our press conference

Lighter note at press conference, The Ombudsman: "Little black pig is our black mark for organisations performing poorly and our icon for staff relief from stress..."





Ms. Alice Tai, The Ombudsman, in a TV interview sharing her experience

Ms. Alice Tai, The Ombudsman, hosting a tea reception to brief media members on our past performance and future plans



Snapshots



Ms. Alice Tai, The Ombudsman, with members of the International Ombudsman Institute at a regional conference



Ms. Alice Tai, The Ombudsman, with the Directors at a tourist attraction in Macau after the Asian Ombudsman Association Board of Directors' meeting

Snapshots



Ms. Alice Tai,
The Ombudsman, leading a delegation to Beijing and meeting with Mr. Huang Shuxian, Vice-Minister of Supervision, Ministry of Supervision, to exchange experience

Ms. Alice Tai,
The Ombudsman, and Mr. Cheong U, Commissioner, the Commission Against Corruption for Macau (right) in Shenzhen meeting Mr. Sun Wenjian, Deputy Director of the Foreign Affairs Department, Ministry of Supervision (left), for exchange of views



Snapshots



Ms. Alice Tai,
The Ombudsman,
receiving Mr. Li Shishi,
Deputy Director of the
Legislative Affairs Office of
the State Council,
at her office

Ms. Alice Tai,
The Ombudsman, with
a visiting delegation of the
Policy and Legal Affairs
Department under the
General Administration
of Customs





Mrs. Helen Yu,
Deputy Ombudsman
(second from right, sitting),
and Mr. Frederick Tong,
Assistant Ombudsman (first
from left, sitting), receiving
postgraduate students from
the School of Professional
and Continuing Education,
University of Hong Kong

Directors of the Asian
Ombudsman Association
visiting our Office in
October 2003

